THEOLOGY OF MORALS OF S. ALPHONSE DE LIGORI. PARISIIS. — TYPIS ADRIANI LE CLERE, VIA DICTA CASSETTE, 29. THEOLOGIA MORALIS S. ALPHONSI DE LIGORIO Fundaloris congregationis SS. Redeemer and formerly bishop Saint Agatha of the Goths. ## ACCEDUNT: 1.

Dissertation by P. Zacharias on the moral theology of St. Alphonsus de Ligorio 2. Practice of the Confessor for the Proper Reception of Confessions. 3. Examination of candidates for ordination. 4.

Summary of the moral and canonical doctrine of Benedict XIV. 5. Decrees of the Roman Pontiffs and their use in moral and theological matters. 6. Appendix concerning Privileges. 7.

Appendix concerning the prohibition of novellae books. 8. Enumeration of reformatted questions. 9. Index of Authors who are cited in this Work. 10.

General index. THE LASTEST EDITION, MOST ACCURATE OF ALL, COLLECTED WITH THE VENETIAN, ROMAN, AND BASSENAE EDITIONS, AND WHATSOEVER THE AUTHOR ADDED IN OTHERS, HE HAS REFORMED OR EXPLAINED. MANY THINGS OMITTED IN OTHER EDITIONS HAVE BEEN RESTORED, COUNTLESS CITATIONS HAVE BEEN CORRECTED, MANY IMPRESSIONS CORRUPTED HAVE BEEN CURED, AND NECESSARY ANNOTATIONS HAVE BEEN ADDED CURSED P. MICH. SISTER HOLY.

SS. REDEMP He was a student and a professor of theology.

MOR. SECOND BOOK. PARISII, APUD ADRIENNUM LE CLEREM ET SOCIETATEM.

WAY SAID CASETTE, 29. PARIS JACQ. LECOFFRE AND SEM, VIA DICTA VIRU-COLOMBER, 29.

ISLANDS L. LEFORT, TYP. BIBL.

WAY SAID REQUIRETH. MCMXCVII. 26 Martii, 1891. From the Library of Rev.

H. W. FOOTH, # MORAL THEOLOGY. ## FOURTH BOOK. ## SECOND TREATISE.

OF THE SECOND COMMANDMENT OF THE DECALOGUE. • THIS PRECEPT PROHIBITS EVERY INORDINATE USURPATION OF THE NAME OF GOD, WHICH ESPECIALLY OCCURS THROUGH BLASPHEMY, THROUGH VAIN JURAMENTO AND OATHING, AND THROUGH NOT KEEPING THEM, ABOUT WHICH THIS TREATISE WILL SPEAK. ## CHAPTER I. ## What is blasphemy? 121 How many kinds of blasphemy are there? 122 Against God how many times can blasphemy be committed? 123 When should heretical blasphemy be denounced? 124 and 125 Which words are, or are not, considered blasphemy? 126 Should one explain if someone directly intends to dishonor God? 127 What is binding on the customary person? 128 And what if someone were to say: O vanity of God! O wounds of Christ! enraged against man! Is it blasphemy to curse creatures on days? To curse the dead? Is it malediction against faith? Is it to imprecate upon others or oneself a demon? Do blasphemies differ in species when opposed directly to the praise of God?

DD. Wherefore the resolution is: 4 2. — 4. Blasphemes he who, breaking against God, curses Him: likewise, he who says that he will do something against His will; likewise, he who denies Him: he who seriously invokes false gods by a vow; he who calls Him tyrannical, unjust, no help for us, not caring about our affairs, to be a demon more faithful, able to do more, not everything being well-ordered, some things in creation being able to have been made better or more fitting, etc. If anyone believes such things thus and not only out of anger or desperation, he then commits heretical blasphemy, that is, one connected with heresy: which must be added to the confession because it differs in species from an imprecatory curse.

Injuria. » 2. 2. d. 9 4. sect. 4 2. §. 5 4. 423. — He who hears someone proclaiming heretical blasphemy is bound to denounce him within six days, as they say in question 6, article 2, note 41, and in canon 24, chapter 3, paragraph 40, section 2, note 429, according to the edict of the Inquisition; but it seems that this period of six days is according to the Inquisition of Spain, for in the general edict of the Inquisition a month is assigned.

See what is said in book 5, number 252, verse. You will be asked. But otherwise, if blasphemy is not heretical; for although it may be said to be such.

July 3rd. The obligation of Pius I and Oom, Legislator, to announce (see at in Decretals lib. 2, cap. 32, n. 47, with Medina and Lopez, and also Mazotta, lib. 2, cap. 6, § 4, n. 6, et al., who say that because of the desuetude these decrees do not seem to be hitherto obligatory. 124.— Furthermore, it is noteworthy that blasphemy means: God wills it, God

does not will it. Let God perish.

Against the will of God. I deny the sacraments. To say a holy demon, omnipotent: not truly if it is named powerful, wise, etc., according to its nature, provided that by these words no honor is intended to be rendered unto it.

It is not blasphemy when a changed or abbreviated word is pronounced, for example. I deny God..... Holy God..... Holy Diana: probably with cit. n. 8. and Croix n. 252. with Gob. et Tann. Nor is it blasphemy to say against men: Blood of God, Body of Him communicated with .

And thus it must be held with whatever Croix says in book 3, part 1, n. 248., namely, that these words by themselves always carry with them the reproach of God. Nor is it blasphemy to say: By the life of God, or of the Saints. Commonly. and with.

Nor to say: I renounce God, if you do not strike me. Tantum cum Satana, et uno probabile contra Satana. Et; sed quia certe vult percutere, ideo dicit Deum non credere, si non percussit; volens tandem sic dicere: sicut certum est, quod de Deo non negabo, ita certum habeo, quod te percutiam. Neither say: This is true, as God. when (contrary to this common assertion it is said not to be: It was destined by fate thus.

Tarnb. ibid., cum Sanct., neque afferre verba Scripturae ad dicendam facitiam; modo quis iis non utatur ad turpia, et non fiat tarn saepe, ut contemptum sapiat. Tarnb. ibid., et neque jure per membra honesta Christi; cum Sanct. Thus, if an oath is sworn irreverently, or by unholy parts of the body.

Therefore, true blasphemy is to say: Potta di Cristo; Potta di S. Paolo; if it be understood by potta the nature of woman, which such a word signifies, but such a signification is commonly neither intended nor known; hence, speaking generally, such blasphemy is excused by a mortal: all the more so because the word potta is equivocal, since in Italian it denotes (even of itself) nothing else than an interjection of madness, as I observed recently in the Etruscan vocabulary edited, and this Maxsot de blaspb. §. 2. dub. 2. considers probable. Likewise, such blasphemy can be excused by rustic mortals who add when blaspheming God or Saints: Fuori di Dio, aut se l'ho fatto io. For although it may seem to be true blasphemy because such a condition does not remove the injury which is first inflicted upon God or the Saints when they are taught well, according to 2. c. 23. n. 3. Sporer from 4th preface chapter 40 number 22, dispensation 2 page 3 section 4

number 3, with Elbed number 480 and Croix book 3 page 4 number 260 according to Croix; thinking that it is not blasphemy if someone utters such words only for a grave cause, they say and Sporer cites this: the reason of irreverence towards God in terms of solemnity (which they claim rarely happens) when someone swears by false gods out of jest or mockery; however, an author of a neater little book, whose title is ours, according to the confessions of the people from towns and villages chapter 4 section 141) and P. p. page 52.) also P. Massett on blasphemy in the cited place with "fatto io", intending thereby not to blaspheme.

Moreover, even speaking of itself, it is probable that such a saying is not true blasphemy; for the true sense of any proposition is formed from its last words, and thus rightly can it be said that the aforementioned proposition, having been taken both wholly and completely, Managgia Santo N. se l'ho fatto io, simul et completè sumpta, does not inflict a true injury upon the Holy, although that condition exists, se l'ho fatto io. Aliud est exterioriter blasphemandi verba proferre, et interioriter nolere blasphemare, ut supra dictum est, aliud praefermatam propositionem proferre, in qua per illam conditionem expressè ostendit proferens se nolle Sancto ullam injuriam afferre. Accordingly, however, it should be said that if one adds such words, not for the purpose of removing the malice of blasphemy, but moved by penitence, or to repair a blasphemy already pronounced. 425.—« 2.

Other signs against God are also referred to blasphemy, even though no words are spoken; such as spitting in heaven, grinding the teeth, etc. Nay, interior blasphemy can be committed by mere thought, just as mental praise of God can. Blasphemy also is committed by one who, towards Saints or sacred things, shows contumely; understand this to mean that Saints are so in themselves, or at least virtually with regard to God, such that their moral honor is considered to be touched thereby, because otherwise it will be contrary to piety if indeed against those as men were on earth; which is venial if done playfully, for example, if one calls the shoemakers of Saints Crispin and Crispinian; but it will be grave if said with contempt or out of hatred or indignation towards the Saints. Though blasphemies against God do not admit the material insignificance, yet many things are admitted in those which are committed against the Excruciated One.

Blasphemat item, qui iratus, etsi non contra Deum, sed contra alios, aut alia, eadem tamen seriò profert, quæ ex sua significatione, aut modo loquendi, ac circumstantiis important imminentem divini honoris, aut imperii: licèt enim eam non intendat formaliter, intendit tamen indirectè, et virtualiter: quamvis id ex subreptione sæpè sit veniale tantùm, si tantùm

materialiter fiat. 426. — « 5. In confessione exprimendum est, si quis (quod tamen raro contingit) directè et formaliter Deum inhonorare intenderit, aut ci formaliter iratus fuerit. . c. (cum communi apud 21. c. 3. punct. 40. §. 4. n. 425. cum 2. c. 45. n. 33. secus, si tantùm ex ira blasphemet.) « 6. He blasphemes also, who injuriously usurps a member of Christ: e.g.,

"May thy blood, wounds, death of God, head, passion, sacraments, chrism, and similar sacred things be lost to thee: since these have been given not for loss but for our salvation, and men commonly take hold of them with great reverence, and their contempt should be contained." He who has the habituation to such words is held under Chapter 1. Of blasphemy. - a serious mortal sin to attempt to remove it.

And if it happens that he does this and yet there is a lapse, it can be excused sometimes insofar as oaths are not made with such natural vehemence as to be involuntary neither in themselves nor in their cause, so that they might be effectively revoked by an efficacious purpose. 1. t. 2. c. 3. n. 6. See c. 3. - n. 36. If it is not attempted, and the confessor notes this, he should deny absolution with discretion.

Here it must be noted that some of these blasphemer[s] claim that they have not perceived the malice of their blasphemy; and certain doctors add that such persons at times may blaspheme through the impetus of anger or disposition without perceiving it. But I think with the author cited (for anger, or a habitual disposition does not so obscurely cloud the intellect that it entirely fails to advert to the malice of blasphemy, although itself is not distinctly known). - 8. Meanwhile, many are excused on account of inadvertence in a sudden disturbance, although it does not seem sufficiently excusable that some say they did not intend those words as something else than to usurp them as significant interjections of their own anger: for just as one can accustom oneself equally well to other words signifying anger and the deliberate will, so too, even if they could not do this, it does not seem fitting to usurp what from common apprehension are dishonorable to God. - 428. — « 9.

That is to say, if anyone in anger against a man does not provoke God but only against a man, and thereby names death of God, the seven sacraments, for example, "death of God," wounds, etc., without scandal and without those circumstances by which contempt is imported, they are not blasphemies, but rather an usurpation of the divine name, this being prohibited by precept, and a grave sin among venial sins, as Cajetan and Armilla say. Blasphemy; and Sanoh.) » (See d. n. 424.) « Although on account of the danger of falling into blasphemies, and because scandal is

rarely absent and moreover among friends and concerning the sacred things of God they are thought to be an affront, they are rarely excused, and men ought justly to abstain from such expressions, as noted in loc. cit. Here it is asked whether it is blasphemy to curse created beings?

It is distinguished whether a curse is directed at creatures in relation to God, for example, if one were to curse the rain or winds as being commanded by God, or with an added word of God, such as "by God," etc. Scold the fire of God. Accordingly, however, if indignation is directed towards creatures without any relation to God.

Ita comm. remissive ad tract.-de relig. part. 3. . 9. 6. art. 2. n. 7. cum Bonac. et . Th. 2. 2. q. 76. art. 2. qui docet: Maledicere rebus irrationabilibus in quantum sunt creatura Dei est peccatum blasphemia; maledicere autem eis secundum se consideratis est otiosum et omnem. Hence follows; or unless from itself the day bears something special in regard to sanctity, as does the case with the days of Pasch, Epiphany, and Nativity.

C., Pentecost, ut dicunt. 21 c. 3. punct. 40. §. 4. n. 421. Elbed de 2. prae. cum . . c. (Instrux. per. li conf. di terra etc.) Ratio, quia prolatio ubi aliquid speciale relucet aut explicatur sanctitatis semper saltem indirecte ad Deum refertur qui omnis sanctitatis est auctor. But here it is asked whether there is true blasphemy in cursing the whole world, commonly: Mamaggia tutto il mondo?

I did not find this case discussed at all under any modalities AA., but merely very faintly indicated by two authors. The author cited (prae. Decretum nimis obiter asserit hanc maledictionem non esse per se gravam blasphemię.

But I altogether hold the opposite to be true, and lead my argument from that common opinion which all doctors hand down; and they say that it is a true oath to swear by creatures excelling others, in which special virtues of divine goodness, wisdom, or power particularly shine, namely by heaven, by earth, and even by soul (as rightly they consider probable. tr. 47. c. 2. punct. 3. n. 28. cum), and similar things. Thus in the treatise on oath, n. 5. Sporer c. 4. n. 7. . 1. part. 4. n. 5. . punct. 4. n. 42. p. 1. n. 4. n. 1554.

And this is clearly proven by †. 26. and c. 30. †. 49. where Moses swore saying: Witnesses I invoke heaven and earth. Here†. 34. Do not swear at all by heaven... and by earth.

Where S. Augustine, in book 4 on the Sermon, says: When you swear by heaven or by earth, I do not think you intend to keep your vow. Just as, therefore, I say, swearing by the aforementioned creatures is a true oath, because in them specifically the power of God responds indirectly, and thereby God is indirectly invoked as witness, so too, on the same account, cursing those same creatures is a true blasphemy, because in them indirectly God is contemned. And this Felix senses indeed from Panormo, in the second part, question 4, article 1, note 1540, where he says, that a reproach against creatures is not blasphemy unless special divine goodness shines in them, as in heaven, earth, and soul.

Benè tamen excusaretur à peccato blasphemie, qui malediceret mundo, intelligens mundum illum, qui Deo et Sanctis adversatur, justa illud †. 48. Si mundus vos odit, scitote quia me priorem vobis odie habuit. But speaking in a common sense manner, I hold that those who curse the world most certainly sin gravely, while themselves accusing such a curse with great horror.

But to sin against the devil by cursing him is considered a grave offense. Deuteronomy 1:2:c.6. §4. Chapter 4. Concerning being cursed. n. 44. It is rarely a mortal sin, because it is always forgiven to him who curses and causes evil, or as an enemy of God: in this way, Tomo says that it does not even count as a venial sin by abstracting from the act of the impatient one; and ibidem and probably consent Mazzot. de 2. prae. q. 3. c. 2. §. 4. et Eibel n. 24.

They note however 10 and with Bea. Reader. et 430. — It is also asked here whether the curse of the dead, which is commonly called Bestemmais de morti, is truly blasphemy? The cause is not found among moral doctors; it is mentioned only in the author's book enunciated (Intrus. per. li conf. di torre, etc.). That book deserves great praise and approval from the most illustrious and learned Bishop D. Julius of Torna, distinguished by excessive erudition and fame.

And furthermore, in the aforementioned book: Works against the Abuse of Blasphemy, revised by the most illustrious and learned D. Castrensis Siaja Orius Episcopus, at that time a public and eminent professor of theology in the Neapolitan Academy. In both books it is said that the aforementioned is not truly blasphemy, but a light and damnable malediction. The same poet is found to hold Mazzott.

And therefore I deem it altogether to be feared, whatever they may say,

that something might be shown in a certain little treatise in epistolary form, which once upon a time I requested to be printed on this matter, and hereby I submit it. The whole reasoning in its summary is, because this kind of malediction neither contains any injury in itself as to the object, nor through the relation to those who utter it, against the souls in purgatory, so that the opponents may contend otherwise. Not from the object, for this word signifies in itself concerning the dead no other thing than corpses (for it is proper to the dead to be eaten up by worms, and not to their souls); but in its highest sense it means men seen as having died, who ask that they may be saved, and are more easily damned, according to the common opinion which desires a greater part of the faithful still to be damned; not however the purgatorial souls, unless perhaps in some particular circumstance of speech, where mention is expressly made (and thus answer is given to opponents) of sacred things: for instance, when it is said: Mass, day, or congregation of the dead. Otherwise in other usages this word neither signifies in itself nor by a common exception purgatorial souls; as when it is said: She fears from the dead: To the dead it profits nothing least of all an adorned tomb, and similar expressions.

And this does not seem capable of being brought to doubt. The instant, quod maledicentes mortuis saltem maledicant reipudii animabus, quae separata a corporibus reperiantur. But I respond that then it will be a mortal sin to curse the soul's anima at the time of pronouncing the malediction, expressing the word of the soul and connoting the excellence of divine power which shines in the soul, as I said in n. 429. v.

But this is not true when one curses a man, inasmuch as it does not affect the soul: just as swearing by someone's soul would be a true oath, but to swear by some man, namely by Francis, by Peter, would not be. Whereas just as cursing a living man is not judged a grave sin, so too is cursing a dead person. All the more so, because (as I said shortly before), a curse pronounced by the dead is referred more closely to the bodies, which alone die, than to the souls, which are immortal.

And it is certain that those who commonly speak ill of the dead intend in no way to speak ill of their souls: they entirely disregard both the consideration of souls and bodies. But, speaking generally, they do not intend to curse the dead, but rather to reproach the living to whom they direct that curse as an injury. Therefore rightly does the cited author (Instruz. per li conf. ut sup.) call the aforementioned malediction rather more properly an imprecation.

And this is evident from practice in confessionals, for if penitents are questioned whether they intend to curse the souls of saints, or at least the

souls of the dead, with horror they respond: Far be it, God avert it. It confirms our assertion, the general rule which he assigns in 4. tr. 40. c. 6. n. 42., where he teaches thus: If the penitent denies that his feeling of indignation toward God was directly extended, but only against a man whom he had been angry with; then the confessor should attend to these words: For if they do not express any diminution of divine honor according to themselves, they are not to be considered blasphemy, nor a mortal sin. To this is added another general rule, namely, that for something to be certainly condemned regarding a grave sin, its grave malice must necessarily constitute.

But notably with regard to blasphemies, they teach that in . 2. cap. 6. §. 4. n. 49. and . 6. art. 2. n. 40., in a doubt whether there is any blasphemy or not, it should minimally not be considered as blasphemy to sum up. How therefore can a malediction against the dead be damned as a mortal sin, when in itself, as we have said, it contains no injury to God or Saints; nor is it directed at the dead themselves by those who utter it, nor do they understand what they say in uttering it? Regarding this point, for my security I consulted the venerable and renowned congregations of missionaries priests of Naples, both regulars and seculars, and they all responded to me that such a malediction is not to be accepted as blasphemy, nor as a grave sin.

And I inserted their responses as extended in my aforementioned letter. From all these things I think it fitting that confessors and preachers diligently take care to instruct rustic peoples on this point, supposing it to be a mortal sin, lest so many souls perish pitifully from ignorance through erroneous conscience of a mortal sin. Nor is it an offense to say that from this knowledge there will be a more frequent abuse of this malediction: for it is replied that it is better to permit countless venial sins than one mortal sin.

And how I wish, I say, that such ignorants, out of horror of grave sin, would have abstained from the said ## Cap. 4. Of blasphemy. curse! It is evil, when one still does not abstain from such a grave sin out of conscience of that same sin, and on the contrary, by reason of that very ignorance, they are condemned to damnation.

But see the response at the end of this chapter, which we recently published concerning this malediction upon the dead, against a certain epistle opposed to us by an anonymous correspondent. Likewise here we note that it is not in itself blasphemy if one maledicts some article of faith, provided that he does not express nor intend holy faith, whether of Christ. Reason, because by the name of faith is not meant the faith of Christ itself:

for human faith can also be understood. And truly those who speak evil of the faith never intend to blaspheme holy faith.

And thus Mazz. l. c., whether it is a mortal sin to curse men, or to invoke evil upon them? See what is said in volume 2, note 83, page 431. — “40. To imprecare aliis daemonem in ira, grandinem, fulgura, etc., licet multi hoc cum blasphemiis confundant, tamen non est blasphemia, sed dira imprecatio, quae plerumque (saltem quando dicitur de illis qui amantur a irato) ob subitam commotionem et inadvertentiam ac defectum seriae voluntatis, non est nisi venialis: quia cum se homines reflectunt, ajunt longè aliter se sentire ac sensisse, ita ut videantur interjectiones tantùm quadam esse ad significandam iram; tametsi christianos parum deceat tam absurdis interjectionibus uti.

Good [literature] in the chapter mentioned above. He considers that it is only venial with regard to oneself to imprecate a demon out of anger, because it does not seriously injure charity. » (Thus, an invocation against someone without any animus is merely a venial sin.

But it is serious if inferiors, even materially, curse their superiors, parents (though only materially), especially in the face: because it is serious against due reverence. Chapter 2, Question 3, Doubt 6. • 41. To take possession of a demon in anger without an imprecation is not of itself a sin: yet frequent mention thereof is unfitting for a Christian, and on account of scandal it may be grievous.

In confessing, it must be expressed what kind of blasphemy it was, namely whether it was directed against God or against Saints: for there is a probable distinction in species between those two. Reg. . Lugdunum d. 15. n. 2. contrarium tamen tenet . 1. n. 14. d. 2. n. 5. cum de circumstantiis rationem 30. 432. — Does blasphemy against God differ in species from blasphemy against Saints?

Bus. with others affirms probably; but Bon. also sufficiently denies this. disp. 3, q. 8, p. 4, n. 4 . lib. 2, cap. 32, n. 38 . 4 tr. 40, cap 6, n. 10. Vica d. qu. 6. art. 2. n. 6. et . 21. c. 3. punct. 10. §. 1. n. 124. cum 40 Lib. 4. Traot. 2.

Concerning the second precept of the decalogue, etc. And Vita probably thinks that it is said in article 2, note 6, question 6, because commonly injury against Saints mediately reflects upon God Himself. Nevertheless, they hold, according to n. 425 from Bonaventure, that on account of another reason it should be expressed in confession whether blasphemy

was against God or against Saints, because they say that the aforementioned blasphemies contain a different species of malice beyond their own wickedness, either against latria or dulia. At n. 6. in fn.

Tomber. in Methodum. Conf. lib. 2. cap. 3. §. 4. p. 284 n. 405 et prae n. 9: Cum idem juxta primam probabilem sententiam Salmanticensium non contra dulia, sed tantum contra latriam peccant, et propterea non tenentur explicare an Deum vel Sanctos blasphemaverint.

EPISTOLA RESPONSIVA Adversus epistolam apologeticam scriptam in propugnationem dissertationis, quae super abusu maledicendi mortuis predicti. I have led it to be indicated beforehand that when against those things which I had written on this point a certain dissertation, to which I had briefly responded after its earlier appearance, had first come forth, having promised that once and again I would satisfy what they opposed to me, thereafter I would not be found concerning this word, so as not to allow an infinite progression, nor to repeat what I had already written; but I said that I only wished to respond (as I did) merely to two doctrines of St. Thomas, which he now anew opposed to me. And at once I indicated in my mind that henceforth I would write nothing more on this controversy (for it seemed to me that the matter was sufficiently laid open), except when by my Adversary I should have been thoroughly persuaded of the truth; for then no difficulty would be present for me to adhere to the opinion, and I would not blush to signify this through public writing, as my mind did not recoil from this practice in some other of my opinions which I had recognized as not consonant with reason, and which I willingly retracted. (1) See above n. 130.

I have edited. Nevertheless, after my response had been widely circulated, another apologetic letter was written in defense of the aforementioned dissertation, in which the author blasphemed by asserting that it was mortally sinful to speak ill of the dead: to this letter, although I had begun to refrain from further responding concerning me, I now felt compelled to reply. And this I append to it merely in which is summarily contested both the response which I had given concerning the dissertation and the response regarding the defense of the said dissertation.

Reverendiss. Abbot D. Bartholomaeus de Marco Basiliano. Most Reverend

Father and Lord most to be venerated. When a certain discretion regarding the malediction upon the dead, and when adverse opinions anticipated my brief response to it, the latest edition was printed from types another apologetic letter written on many occasions in defense of the

aforementioned dissertation. When that letter came into my hands and was accurately read by me, it seemed fit to respond thereto from the depth of my heart.

From one part, indeed, counsel was received to cease from further responding, so as not to proceed indefinitely. From another aspect, it would now seem expedient to respond, as my friends urge me to do in this matter; first, because an error occurred in the previous response from which I intend to retract, although that does not pertain to our matter, as you might have observed from this other response; secondly, because in the laudable apologetic letter, the adversary presents new objections, by means of which certain ambiguities are to be removed, and thus it has seemed necessary to make a further response. Wherefore I have taken care to send thee this letter as an answer, and from thee I beg two things: The first, that thou peruse it with the attention of thine mind, subtracting, adding, correcting whatever may seem good to thee; The second, that thou open counsel candidly to me, whether it will appear expedient to thee to have this letter free from types, since on one side I am displeased to contend with a man and his associates of the order whom I hold in highest regard and honor greatly (although I have found not few among them who adhere to my opinion), and from another side that this opinion be derived from faithful hearts, namely, that the aforementioned malediction is mortal, since such it is not, I think it does not much detract from the glory of God, who has the glory of souls' salvation.

Grant me, I beseech you, if not many things which had already been noted in the prior response, you observe repeated here. This is not to be otherwise decreed than so that all things are simultaneously presented to the reader's eyes, while he reads those animadversions which my adversary anew objects to me. In his dissertation having undertaken to prove that the malediction upon the dead is a lethal sin and true blasphemy for two reasons: 4. because the bodies of deceased faithful are sacred; 2. because the aforementioned malediction cannot be separated so as not to refer to the souls.

In response to the dissertation presented, I said that I would already have responded twice to those objections; therefore, in order not to always repeat the same thing, I wished to respond to all that was being added. Nevertheless, with two authorities of St. Thomas Aquinas which were newly adduced, I said that I was not able to refrain from responding. The first text is taken from III. p. q. 8. art. 2., where the Holy Doctor says that Christ influences the bodies of the faithful with the right to rise because of the inhabitation of the Holy Spirit.

And this same right he intends to prove in another way from the reason of sacramental communion, whereby the faithful are restored while they live; hence, from these two reasons, he infers that the bodies of the dead should be reckoned among the sacred things, so that they may be venerated by a sacred cult emanating from the virtue of religious devotion. If (I respond), these reasons should prove that the bodies of any deceased persons are to be held sacred; they would also necessarily prove that the bodies of damned faithful ones must be reckoned among the sacred things; for in those too sometimes the Holy Spirit dwelt, and were made corporately one with Christ through the Eucharist. He says that those qualities are later lost through sin.

Therefore I hold that whenever the authentic testimony of the Church does not establish it to me, it is not lawful for me to regard that soul as enjoying the glory of eternity, and also whenever the Church does not elevate the honor due to it in a sacred rite of worship, as we shall explain below, it is not fitting for me to regard that body as sacred. Besides which, if the bodies of the dead are sacred on account of the Eucharist which they have received and on account of the dwelling in them of the Holy Spirit, it will necessarily be required to say also that the bodies of living faithful should be regarded as sacred to be venerated; so that any injury or curse inflicted upon the body of a believing living person will be considered a grave sin against religion. But this is contrary to the explicit doctrine of St. Thomas, as we shall see shortly.

But to say that the bodies of the dead are sacred on account of the rites with which the Church makes use of them; because they are made sacred by the benefit of holy sepulture, adorned with processions and blessings, anointed with incense, and also (as the adversary says) according to ancient custom, the sacred Eucharist is accustomed to be placed upon the breast of the dead. I know not why these sacred acts of worship should be called rites; for it has been found in earlier ages, even during the time when the Church enjoyed peace after the persecutions of the infidels, that the bodies of faithful departed were buried in fields and roads, as testify Thomassinus and Cattet: nay, more councils have forbidden that corpses receive sepulture within churches. That if in later times it was customary to bury them in holy places, this, according to St. Gregory, proceeded from the fact that the proximity of tombs caused the living to remember more frequently to pray for the souls of the dead: This would be beneficial for the dead (are the words of the Saint), if they are buried in churches; for then, prompted by the sight of their own tombs, the living would pray for them more often; lib. 4. 52. et 53.

And the same is said by St. Augustine in the book On Care for the Dead.

Benedictions autem cum aqua lustrali dicunt Gacantus et Durandus erga cadavera ideo adhiberi ut a daemonum infestatione illa liberentur. And for this same reason incense is burned, as Innocent writes.

III. book 2. on the mysteries of the mass, chapter 47, and for that reason the same is done by the saints. The Eucharist was applied to the heart of the dead, as Saint Gregory asserts in his second book. Dialogo 24., licet hoc postea ab conciliis reprobatum sit in IV.

VI and VII century, as P. Vestrini relates in his theological letters, t. 3, epist. 53, just as it was also forbidden to place the sacred Eucharist in the fundamental churches on stones, or to apply it to energumens, or to the wounds of the infirm, as likewise to smear the forehead, eyes, etc., with consecrated blood, which among ancient faithful was a received custom, referring to S. Cyril and S. John Chrysostom. These things make manifest and clear these pious acts (which derived more from simplicity than from religion), not indicating that they were sacred with regard to which those things were employed, but only that they were used for obtaining good effects, which faithful people hoped to achieve through their use. But speaking of the rites by which the Church commonly uses them today in burying corpses, these are the things that Spondanus writes (Book 4, p. 2, cap. 45, sect. 3).

Concerning the sacrament of exorcism: For it would be abundantly attested by numerous testimonies and examples from fathers how great is the power of the cross, by which are marked and adorned with blessed water, with which they are sprinkled, and with incense, in which they are fumigated, not only for warding off many evils, but especially for driving away demons, and dissolving their tricks and those of magicians. And in chapter 44, section 4. The suffusion is fitting for the bodies of deceased faithful, because those who die piously are a good odor to Christ; and that, moreover, may be signified, that they have left behind the odor of good works. By the incense, it is judged that they believed themselves to go through death to immortality.

Furthermore, Stephanus Durandus (lib. 4. cap. 9. n. 9.): But incensation is done for the reverence of the place and divine service, etc. Likewise, Joannes Beleto (in): The corpse is placed in the tomb, and blessed water with prunella and incense are applied. Benedicta aqua, ut daemonum non accesserit ad corpus. Thus, for the removal of the maker of the body.

Pruna ad designandum quod terra illa in usus communes redigi nequeat. Furthermore, William Durandus (in the Rationalis, book 7, chapter 35):

Blessed water is placed there so that demons may not approach the body. Thus, in order to remove the craftsman, or that the acceptable odor of good works offered to His deceased Creator might be indicated, or to show that He sought assistance of prayer for the departed.

From which it is evident that all the aforementioned rites, which the Church employs towards the dead, are not a sacred cult intended to honor the corpses, but mystical ceremonies. Note further that the Church denies to those who have departed this life under the bond of excommunication or interdict, although they had previously given signs of true penance and indications of their salvation before they expired. Igitur non ideo cum defunctis eos ritus adhibet Ecclesia, quia supponit eos esse templa Spiritus sancti, sed quia communionem inter viventes et defunctos cupit conservari.

The other place in St. Thomas which is objected to me has been taken out of the same third part, question 25, article 6, where the Angelic Doctor says that the relics of saints are to be venerated because they were temples and organs of the Holy Spirit who dwelt in them and worked through them: and also because at times those very relics will be conformed by the glorious resurrection of Jesus Christ to His Body. From this, my adversary infers that a real malediction upon the bodies of the dead is truly a blasphemy, because those have already long been temples and organs of the Holy Spirit. But if this reason were valid for the dead (let me say this again), it should be all the more valid for the living; nay, much more so, for the living are actually temples of the Holy Spirit (if they live in charity, as one ought to understand).

But S. Thomas II-II. q. 76. a. 3. with the common theologians who follow him, Cajetan. Soto, Serra, Mol. Let us refer to the entire text of Angelicus, so that it may not be imposed upon me that I have presented a truncated version.

Malediction is that by which evil is pronounced against someone (noted) either by commanding or desiring. Desiderare autem vel imperium movere ad malum alterius secundum se repugnat charitati qua diligimus proximum volentes bonum ipsius. And thus according to its kind is mortal sin, and the more gravely it is, the more is the person against whom we speak evil to be loved and revered.

Wherefore it is said [Exod. 21:17]: He that speaketh evil of his father or his mother, shall surely be put to death. However, it happens that the word of malediction extended may be venial, either on account of the

smallness of the evil which one invokes upon another, or even on account of the affection of him who utters it, since words are chiefly judged according to their gravity. Hence, by inveighing against me as my adversary and repeating the words of the Angel with emphasis according to their kind, it is a mortal sin; thus, speaking loftily he becomes inflamed: Look, or do not look!

However, I seem to have understood this thus: namely, that it is a mortal sin for men to speak evil of one another at any time when the malediction is formal, which is then called such when one desires with an evil mind that what is imprecated should happen to them, or judges others to be deserving of that harm, as the Angelic Doctor expresses in article 4, example of judgment, who moves ministers of justice to inflict unjust punishment upon an innocent person. Et hoc dicit Sanctus ex se esse peccatum mortale, quia hoc secundum se (ut ipse loquitur) repugnat charitatis, quod diligimus proximum, volentes bonum ipsius. Nam sicut claritas nobis imponit ut proximi bonum velimus, ita vetat ne illi malum optemus et ne alios ad illi malum inferendum inducamus.

Speaking however, St. Thomas regarding verbal malediction (of which we are presently speaking in this case) says that it does not exceed the level of venial sin, or when the evil which one curses is light, or when there are lacking the corrupt affections, which are called material maledictions (namely, by delivering a malediction either in jest or without full deliberation). And this he finally confirms by this reason: Because verbal sins most especially proceed from affection. The same is taught by Cajetanus, as cited above, in question 76, article 4, where he says: Note from article 4 what proper malediction is, namely to say evil, insofar as it is evil, directed against someone with intention. And hence arises that malediction is distinguished as formal and material; and that sometimes it is a mortal sin, sometimes a venial one; for formally malediction is mortal by its very nature, as is clear; but materially, if it be optative, it is not mortal; whereas if it were imperative, it could be mortal.

And the reason for the diversity is that besides the intention of the optative malediction, no one is injured; because neither from the intention nor from the work of the minister obeying, although not from his own intention. I said ex suo genere, quia propter imperfectionem actus, sive ex parte objecti, ut si parvum malum optet vel imperet; sive ex parte operantis, ut si ex ira (vel ex ludo, addit S. Th.) maledicat, quamvis effectus tendat in malum, quia non ex consensu rationis in malum tendit, deficit à perfecta ratione peccati, et per hoc non est mortale. In accordance with the sequel of St. Thomas's doctrine, Cajetanus states on one hand that formal malediction, namely ex intentione, is of its genus mortal, and thus

either venial by reason of the imperfection of the act, specifically the consensus of reason, or by reason of the smallness of the evil sought; but on another hand he says that it is non-otherwise than venial material malediction, namely extraneous to intention, pronounced optatively, that is in an optative mode, or expressing desire through words, taking optative adverbially for the difference from imperative, specifically imperative mode.

And the same, albeit in a different manner, teaches D. Thomas in the passage cited; for there he distinguishes between formal and material malediction: namely, first he speaks of the formal one, that is, with the intention of willing evil, which is pronounced when he says: To will or to move another to evil by commandment, according to itself repugns charity, since we love our neighbor in wishing his own good. And thus according to its own genus is mortal sin. Therefore that which the Holy Doctor understands to repugn charity and to be mortal according to its own genus is not simply pronouncing a malediction, but willing or moving by commandment to evil of another.

Therefore, St. Thomas recognizes gravity of guilt only in willing the evil that is pronounced, or in moving others to inflict evil by command. Then he proceeds to explain material malediction, saying that it is venial if issued from a slight movement or playful intent, and giving the reason: Because words are chiefly considered as sins insofar as they proceed from an inner affection, as was stated above in question 72, article 2. And in said article 2 he previously had said: Words, inasmuch as they are sounds, do not cause harm to others; but inasmuch as they signify something, that very signification proceeds from the interior. Therefore, in sins of words chiefly consideration must be given from what inner affection someone utters certain words. Therefore another thing is to curse optatively, as Cajetan says; and another thing is to curse by opting, as St. Thomas says; for optative denotes cursing through optative words apart from intention; but opting understands St. Doctor to curse from true intention, as he clearly explains later, saying: "But willing itself... according to its own nature repugns charity," etc. And this is formal cursing, and thus gravely culpable; and it only escapes veniality either by reason of the smallness of the evil opted for, or through deception, or by a slight movement, whereby the curse is pronounced.

However, this question between me and my opponent is merely one of name; for given that S. Thom. generally said that any malediction of its kind is mortal, yet the S. Doctor certainly holds that to maledict a man without a wrongful affect is not except venial. And I seek to prove nothing other than this very thing itself. Therefore both D. Thomas and Cajetanus,

as well as all other doctors, agree with St. Augustine in what is found in the same Angelicum 2. 2. q. 76. art. 4.

Object. 1. They do not consider maledicere against a man to be blasphemy, because he is a temple of the Holy Spirit; for if they held this, they would not seek permission to speak malevolent words without an evil intention; for to maledicere against the Saints or sacred things, although there be no evil intention, is always mortal. From this it is evidently inferred that according to Angelicum and the common opinion of Doctors, a faithful person can rightly be considered precisely on account of being a temple of the Holy Spirit. Moreover it is further deduced (contrary to what my adversary also implies) that just as there is no great culpability against charity and piety in cursing the body of a living faithful person if an evil intention be absent, so too there is not great culpability against charity and piety either in cursing the body of a deceased faithful person with an evil mind; for according to holy Thomas, charity which seeks to follow those who have departed in grace is nothing other than the extension of charity which we ought to show to the living: Charity (says holy Thomas), which is the bond uniting the members of the Church, does not extend only to the living, but also to those who depart in charity.

But my adversary says that there is a great distinction between the malediction of the living and the dead, because in the living reigns the lust for sin, and therefore they themselves are involved in the danger of sinning, from which he who has departed in grace is free; whence it follows (he says) that malediction against the living can be venial, since it is a sin against charity, from which removed the evil intention, it can be non-grave; but malediction against the dead, since it is a sin against religion, is always a grave sin by reason of the injury inflicted upon sacred religion when the sacred body is cursed. But that I may respond, let us again inquire about its principle, from whence it falls that those sacred bodies of the faithful dead are deemed to be profaned. He himself says according to the doctrine of St. Thomas that it is grave to curse the dead, because their bodies were organs of the Holy Spirit, and because they received the communion of sacred mysteries.

I respond therefore: As regards that which the dead body, on account of having received the sacred communion and because it was a temple of the Holy Spirit, should be held as holy, this reason I have already stated above, namely, that both the bodies of the dead and the living are to be held as sacred, because even the living are a temple of the Holy Spirit: Your members are the temple of the Holy Spirit. 4. Cor. 6. 49. But in the living man (it will be replied) that fuel is present which brings man under the power of sinning.

I respond: Therefore, was the body of Adam before sin holy? Furthermore, the power to sin does not cause a change in the species of the body's sanctity. Neither fuel nor occasion for sin make it such that this living now is not a temple of the Holy Spirit.

The more so because this fomes does not introduce any guilt or stain into the soul; for the grace of the Redeemer erases all stains of sin from the baptized, and abundantly restores all its damages: plentifully among those redeemed. Psalm. 42:9. y. 7. Whereas therefore sin abounded, grace much more abounded.

I came, that they may have life, and may have it more abundantly. Wherefore it is defined in the decree on original sin, canon 5: that through baptism immaculate souls are made clean, and a thorn does no harm but rather profits to one who consents to receive greater reward: for God has nothing to hate in the innocent, immaculate, pure, and beloved ones of God... yet this holy Synod confesses and feels that remaining concupiscence or thorn in those baptized: for when it is left behind in the contest, it does not harm those who do not consent, since he who competently contends will be crowned. Talis ratio, quod sunt organa Spiritus sancti, non efficit, ut corpus fidelis vel vivi vel defuncti habeatur sacer; aliud est, etiamsi vivis sine pravo animo maledicere semper sit peccatum gravis; et oppositum admittit ipse adversarius.

Wherefore it is necessary to resort to another reason (if perchance the adversary finds this one), namely, that the sacred bodies of the dead be deemed worthy. Nor is it valid to say that one can avoid cursing the living by not considering them as temples of the Holy Spirit, but by directing the mind to other particular motives. Against injuries by which he was affected.

And I submit: and why this precise exclusion cannot be made even with regard to the dead, by cursing them on the basis of some supposed offense, but without a wicked intention? Besides which (as it is written in the first epistle), these maledictions usually fall more upon the contumely of the living than upon the defects of the dead. But (he says) this cannot be accomplished for naught, because the bodies of the dead are sacred; but here returns the question, because this is what is in dispute: for we say that no body of the dead should be regarded as sacred unless the Church declares it to be holy and commands it to be used as sacred and venerable, elevating the veneration from a human order to a supernatural and divine one, as we shall see shortly with the authority of St. Thomas.

But the author will reply according to St. Thomas in the cited article of the first part, that relics of saints are worthy of veneration because such bodies' souls actually enjoy God; and he says further that although defunct bodies cannot be cultually honored with dulia, they nevertheless cannot be despised since they are sacred; for their souls must be believed to be saved in a pious manner. Therefore, I respond, since the bodies of the dead are sacred, a sacrificial cult is to be shown to them. But I would like to know what kind of sacred worship is to be shown them.

The adversary admits that no cult is due to idols; but I find another who is assigned either by the Church or by the DDs, and I cannot comprehend how any other species of sacred cult could be assigned to them except latria, hyperdulia, and dulia. But (arises the question) to whom is the worship due of altars, vestments, and vessels? I respond, that it is reduced to the worship of latria, for these things in themselves do not deserve any worship; since, when they are execrated, they are no longer venerated with sacred worship, but rather with relations or secular uses; hence their worship is reduced to the worship of latria by reason of the sacrifice to which they are ordained.

Therefore, what defunct bodies cannot be venerated with the cult of latria or any sacred reverence, should not be numbered among the sacred. P. fid. cath. ade. 2. cap. 5. n. 14. circa fin.) loquendo de veneratione debita Sanctorum et castorum defunctorum reliquiis, dicit: Imo insuper addo, hanc ipsam consuetudinem (nempe venerandi uti sacras reliquias Sanctorum) ostendere, longe altiori modo Ecclesiam de Sanctorum reliquiis senire, quàm vulgarium hominum mortus corpora soleant reputari. It seems to me that even St. Gregory of Nyssa, speaking of the bodies of Saints and faithful martyrs who have died a common death, says that there is no equality between the honor which should be shown them and that which should be given to others; for he adds that the bodies of other dead are shunned by all and flee from them; but because the bodies of the Saints are sacred, each one desires to approach them, and believes himself to be sanctified through touch.

Let us follow his words, which he relates concerning the body of Saint Theodore (in the Prayer). Saint Theodorus): The body of Saint Theodorus, which has been preserved and dissolved by a vulgar death, is not even comparable to other bodies... for the rest of the relics are abominable to many; and no one passes by the tomb without it, or if from an unexpected cause he casts forth works, he will pass it by. But if it should come to some place similar to this, where our present assembly is held, where the memory of the just and holy relics is revered, first of all, he who sees those

things takes great delight in them... thereafter desires himself to approach the altar, believing that consecration and blessing will be contracted from it.

Here it is to be noted how different is the veneration which the Church and the faithful show to the bodies of the Saints, and that which is shown to the bodies of other deceased persons for a good reason. As regards the due veneration of bodies whose souls enjoy God's presence, we respond that the reason of St. Thomas cannot hold unless it pertains to those saints whom the Church declares as such, concerning whom the Angelic Doctor speaks; for St. Thomas, proceeding from the reason that the souls of the saints enjoy God, concludes that their bodies should be venerated. Therefore, in order to understand what the holy Doctor intends and what is the truth of the matter regarding this, two kinds of cognition must be distinguished, by which we know and believe that the soul of some person enjoys God, one human, another superhuman and divine, both declared by the Church.

Now certain it is that the veneration which the holy Doctor Thomas speaks of as due to the bodies of the saints cannot be applied except to those bodies whose souls we know to be blessed by a revealed knowledge of the Church, which elevates the honor owed to them in an order from the human to the superhuman. Hence it comes to pass that it is not sufficient for us to have some deceased person held as sacred even with moral certainty, so that his body may be worthy of a sacred cult; but it is required that the Church make us certain through authentic certitude, which is communicated to us by divine light, that the soul of that deceased one already reigns in bliss with the Blessed. Let us hear the words of St. Thomas Quodlibet. 9. articulus. 16.

Thereupon, in response to the objection that the Saints cannot be venerated because their moral beatitude cannot be known with certitude, the Saint (in reply to the first point) thus responded: It must be said that it is within the power of the Pontiff, who has authority over the Saints and can canonize them, to certify the state of someone through investigation of life and attestation of miracles; especially (note) through the instinct of the Holy Spirit, who penetrates all the depths of divine wisdom. Therefore, on account of any moral certitude, whether human or natural, we ought not, nor can we, hold the bodies of the dead in sacred faith, nor offer them divine cult, unless after their canonization; for then the Church transfers the veneration due to that body from a human order to a superhuman and divine order, as Angellus says. The same is clearly expressed in the decrees of Urban VIII concerning the cult of servants of God, who have not yet been canonized or beatified (see what Benedict XIV has said on this

matter).

Of those who have been canonized. SS. libri secundi, caput undecimum); in his praesertim statuitur, ut in scriptis vitis seu gestorum talium Dei servorum sequens protestatio auctoris praemittatur: Profiteor me haud alio sensu, quidquid in hoc libro refero, accipere aut accipi ab ullo velle, quam quo ea solent humana dumtaxat auctoritate, non divina catholicae Romanae Ecclesie, aut sanctae Sedis apostolicæ nitere; noten- tur haec verba: Quæ humana auctoritate, non divina ecclesiæ, etc. Itaque gesta servorum Dei habent aliam fidem et venerationem quam humanam; sed cum eos Ecclesia declarat sanctos, tunc veneratio ex humana ad divinam extollitur propter Ecclesiae divinam auctoritatem. Hence it is that, in order that a superhuman cult be rendered to some deceased person by a priest, it is necessary that there be some principle and superhuman knowledge of the sanctity of the object, which is made known to us through divine mediation by the Church.

And therefore, since Saints have already been declared by the Church, it would be both irreverence and sacrilege to use their bones, clothes, letters, and other things with which they were used, unless necessity compelled them to do so for profane purposes. That, however, is not the case with respect to things pertaining to the dead who have not yet been canonized; even though we might have some knowledge of their heavenly beatitude, it does not prevent this from being forbidden. Although we concede that with veneration we may have relics of some deceased person whom we hold in opinion of sanctity, to invoke him, to care for a depiction of his effigy, and other such things, because these cults do not have a sacred reason, but are merely acts of religion (not civil ones), which, as P. Joann. à S Thoma says, my adversary objects to the authority of, and which Bellarminus also teaches (Contr. 4. lib. 1. c. 10. n. 4 et 7).

XIV. Of canons. The holy doctors in their second book, chapter two, and note four, seven, can be applied equally with regard to the dead as to the living.

Nay, from this Bellarmine concludes that it is licit to use those acts towards the dead which can be lawfully rendered to the living whom we believe to be saints: If it is lawful to honor the living whom we believe to be saints, why not the dead? And when some had appropriated this teaching of Bellarmin, namely that he allowed venerating non-canonized Saints, he defended it by saying that he himself did not allow cult to be paid to the non-canonized ones, except to that one which was accustomed to be shown to the living. In n. 1.

I said actus religionis, because another is the actus religionis, another is the cultus sacer: to kiss the hand of the servant of God, to commend oneself to his prayers, to wash his feet, and so forth; these indeed are acts of religion, because they spring from religion; but they are not acts of the sacred cult, since they are not exercised towards sacred things. And thus likewise to bury the dead in a sacred place, to anoint them with incense, to kiss their feet, to venerate their relics, are indeed acts of sacred ceremony and religion, but they are not acts of worship due to sacred things. Of the malediction of the dead. - Indeed, they are called sacred ceremonies and truly so, because those precepts which the Church has commanded pertain to what is sacred; but they cannot be called a sacred cult; for a cult regards that toward which its objects are directed; hence it can never be said that there is a sacred cult when the object of reverence is not sacred.

Furthermore they are indeed acts of religion: and here I confess that in my first response (I know not how) an error occurred, for when I should have said that incense offerings, blessings, and other ceremonies which we customarily use concerning the dead are not sacred worship, I said that they are not acts of religion. I affirm indeed, and I do not doubt that they are acts of religion; but therefore they are not sacred rites, and consequently it is not true that on account of these acts, which we use towards the dead, their bodies should be regarded as sacred things and thus be venerated with a sacred cult. Therefore Alexander III in chapter 4 on religion and saints absolutely prohibited the veneration of any Saint as such, unless Church authority intervene: For even though miracles may occur through him, it would not be permissible for you to venerate him as a Saint without the authority of the Roman Church.

And although formerly some were venerated for the Saints without the declaration of the Church, but solely by the custom of the people; nevertheless it responds in the conclusion that this was permissible from tacit papal approval: Just as customs have the force of law through the tacit consent of the prince, so too the cult of the altars of the saints, introduced through custom, has its authority from either tacit or express approval of the Pontiff. I reply therefore: Hence I do not doubt that the rites which the Church employs towards the dead are sacred ceremonies and acts of religion, but not sacrificial cult; as the Roman Rite itself, speaking of funerals, says that the rites employed in the burial of the dead no longer call forth sacred cult, but only mysteries of religion and signs of Christian piety, thus saying: Sacred ceremonies and rites with which the Mother Church is accustomed to use in the funerals of her children, as true religious mysteries, signs of Christian piety, and most beneficial suffrages for the souls of faithful departed, parishes should guard with supreme

care. I add two other objections from which this becomes clearer.

Firstly, si talis cultus esset sacer, etiam esset cultus publicus, siquidem ille à publico ministro Ecclesiæ exhibetur; et hoc certum est quod fieri non potest, dum ipsa Ecclesia prohibet ne cultus publicus cuivis ab eo pro sancto aut beato non declarato exhibeatur. Furthermore, Saint Francis de Sales says that a sacred cult will not be rendered to the dead except in testimony of their excellent virtue; and this excellence should have a certain knowledge thereof. How, however, can it be said that the rites which are exercised towards the dead are sacred cults, when in general there is no knowledge of this excellence of their virtues concerning the dead?

Nay, it is held as certain, that among deceased faithful many are reckoned who are consumed by eternal fire—if temporarily: these rites are indifferently practiced towards all. Therefore it is said that such rites for the dead are not considered sacred worship for the Church. I anticipate an objection that might be raised against me: If, therefore, it is deemed that venerating the dead is an act of religion, without a doubt cursing them will be an act opposed to religion.

It was previously answered by the insufficiency of the argument; if this argument were valid for the dead, it would also be valid for the living; for to honor living servants of God with the acts described above, as we have shown, is likewise an act of religion or a religious cult: hence, to curse such a servant of God, even with a depraved practical intention, would equally be a grave sacrilege; but no one says this. But a direct response is offered. It must be distinguished and observed: for what reason such an act of religion arises; if it arises from the motive of the object itself, because the sacred object is such, then contumely towards that is a sin against religion, and is sacrilege; but if the act of honor proceeds from religious piety of faith, then certainly it will be a religious act, because it proceeds from the motive of religion; but cursing the object will not be an act contrary to religion, because it is not an act referred to the sacred object.

The adversary marvels in his dissertation, and with sincere (or, if you will, nonsensical) face he calls imprudentes them who, in the confessional or in a suggestion, say that they do not consider it grave to maledict a deceased person from themselves. But I, and others with me, marvel at those who do not consider it an absolute scruple to proclaim that this malediction is a mortal sin and blasphemy. That an action may be said not to be a grave sin suffices if there is true probability that such a thing is not so; as all admit: I understand this to mean that which clings firmly to a foundation, such that it can securely (according to the judgment of common sense, in

the settled question concerning the more probable and the less probable) be held and taught.

And as for those who do little or nothing in regard to our matter, there are two doctrines opposed to me by my adversary: one from Saint Augustine, namely, that he gravely sinned in matters pertaining to salvation, either merely because he proposed certainties concerning incertitudes, book 4, de bapt., chapter 3 and chapter 5. If it is uncertain whether something is a sin, who doubts that there is a certain sin? For there the Holy Doctor speaks of him who acts in doubt concerning matters pertaining to the necessity of eternal salvation, in which each fears to follow what is certain. Besides, there Saint Augustine speaks of a certain Donatist who, although he was certain that baptism was rightly and properly conferred in the Catholic Church, doubted whether it would be rightly received by him in his own sect; he presented the full text: If he had any doubt about not receiving rightly what is rightly received in the Catholic Church, he would gravely sin in matters pertaining to salvation of the soul, or solely because he proposed certainties regarding incertitudes.

And furthermore: To receive and consider as valid in part what Donatus holds, if it is uncertain whether it is a sin or not, who doubts that it is certain to be a sin, rather not to receive it there where it is certain that it is not a sin? Who doubts that this Donatist would certainly sin? But Augustine did not say that he who acts from true and solid probability, when he does not doubt concerning those things which pertain to the necessity of salvation, such as baptism, and when the action is not certainly illicit; for the law imposes no certain obligation on doubtful matters, according to what the Angelic Doctor teaches in Quodl. 14. de cert. art. 3.

No one is bound by any precept except through the sciences of that precept. And the same is proved from chapter 31 of On the Effect and Power of Delegated Judicial Authority. nisi ex mandato certo fueris, aeque non egisti quod mandatur.

The same regarding her. As certain things, in the 14th question, where St. Leo writes: In those matters which are either doubtful or obscure, that is necessary to follow, which neither contradicts the evangelical precepts nor the decrees of the Saints. Let there be found by the Fathers against it.

This place has a role insofar as it can be sown, that some action not be gravely illicit. But since it is affirmed absolutely that some action is a mortal sin, neither the opinion that is probable nor even more probable is

sufficient; for more probable does not exclude a reasonable fear of erring; hence it does not make the law remain indeterminate, and it does not prevent the opposite opinion from being true if truly it is probable. Therefore, when dealing with sacraments, it is not licit to follow what is more probable because it is opposed by what is less probable, even though it is less probable. Therefore, in order for some action to be gravely illicit, certainty is required, as taught by all, including St. Raymond (in lib. 3 de ponit. §. 24), who wrote: Do not too readily judge mortal sins where it does not stand certain through a clear Scripture.

Therefore, the Saint warns that no action should be judged as a mortal sin where it is not certain to be such; and when he says where it is not certain, he always understands it as an excess, asserting something to be a grave sin whenever its gravity is not certain. Saint Anthony likewise said (P. 2, tit. 4, cap. 41, §. 28) that he cannot determine himself to be in danger of sinning, that any action be a mortal sin, unless there is an open Scripture, or determination of the Church, or evident reason: The question at hand (are the words of the Saint), concerning some action, whether it is a mortal sin or not, unless for this purpose there is express authority from Scripture or canon of the Church, or evident reason, most permissively determined. Because (as he adds), he who determines without any of the aforementioned moments, directs himself to gentilism, and casts souls into the danger of damnation.

Here most wisely Benedict. XIV. In suo opere de Syneo, in pluribus capitibus nihil aliud Episcopos monet, quam numquam peccati gravis eas damnant opiniones, quas qua ut probabiles DD. utriusque partis defendunt. My adversary has gone so far as to call his own conclusion a theological opinion.

I know myself to be intruding in order to decide whether his opinion weighs anything, and to what extent it is weakened by probability; but I do not know if his theological conclusion can be called such, since there are no Scriptural texts for it, nor any Church definition established, nor any evident reason, nor common authority of Doctors, nay, nor even one who has written according to his opinion. He adduces the text of Saint Isidore of Pelusium (book 5 of his letters, letter 494): They live even who are dead; and enemies enter into covenant! Why therefore, and the laws of nature, and the excessive limits of enmities, cursing after life?

For thou dost seem to sharpen thy tongue unto ashes and cinders; but first thou violatest sanctimoniousness, which it is necessary that all mortals should strive to attain. Then it has an immortal soul, whose avenger is the eye of God ever watchful. But in the book which is with me, printed in

types in Rome in the year 4620, I find not thus, but the aforementioned text conceived in other words; for thus it reads there: They usually live on calumnies, when even enemies conspire together against those who are already dead, and a treaty is entered into.

Why therefore dost thou transgress both the limits of nature and those of enmities, while calumniating and defaming one who is already dead in life? For thou thinkest that thy tongue merely offends ashes and dust; but lo! first thou violatest the sacred right of sepulture, which none neither desireth nor seeketh to possess; then it hath an immortal soul, whose watchful eye ever standeth as a vigilant avenger. Now let others judge whether this authority confers any weight to the opinion of my adversaries, who maintain that all the bodies of deceased faithful should be venerated as sacred and venerable. S. Isidore calls the right to burial sacred, but not the body of the deceased.

But moreover, his adversary assents to everything that favors him, the Scriptures, the definitions of the Church, the common authority of the Decrees, and evident reasons. Scripturae sunt: Neque maledici regnum Dei possidebunt, I. y. 10. (Maledici explicat Calmet, qui convicium in faciem proferunt, vel de absente obtrectant). Ecclesiae definitionem dicit esse disciplinam qua ipsa utatur in sepeliendis fidelibus. It also has common DD. authority for itself, saying that the moralists did not discourse on this matter because according to their rules it had been held certain among them.

Finally, it has evident reasons on its side, which are those very ones that he himself set forth in his own dissertation. Let these persuade me; I do not wish to decide the question by my own judgment, but let the wise exhaust every controversy. Furthermore, speaking of my opinion, as I related on the aforementioned pages, besides the three authors cited there who have written about this matter, I have examined this matter from many perspectives, and especially from all the missions of the city of Naples, in which, since all mission theologians primarily deal with moral theology, and where (as has been discovered by all), the choicest clerics of Naples are gathered, I have done so.

Hic adversarius meus Socratis quemdam textum in medio afferens invitus, quod non omnes ea sunt solertia praediti, ut sint magistri idonei ad similes enucleandas quaestiones. I concede that not all are masters; but since the aforementioned congregations of the entire body gave me an absolute response, it must be supposed that the resolutions were given by no less episcopal than wiser persons. The aforementioned question, as I have already written, was also discussed in Rome by mandate of Benedict XIV;

and according to the mind of said Pontiff (whom I never intended this definition to be an ex cathedra pronouncement), that question was resolved, which would lack the guilt of a mortal sin.

But he writes that one is not bound to anticipate faith nor to use this in such a manner, nor to adhere to the resolution given by Rome. Nec meus animas appibit ut eos cogarem ad hoc credendum; sed hoc scripsi, quia vehementia momenta adeunt mihi ne in dubium id revocem; dum tamquam ex propria scientia testis et de visa (ille enim propriis oculis aspecti Pontificis schedulem) existens sacerdos religiosus doctusque et in hac controversia minime affeptus, testatus est mihi; propterea existimavi alios qui ad utramque sententiae partem indifferentes sunt prudenter et non abs ratione id credere etiam posse. According as Casteroquin to me was equal in quantity, so much more certainly did this seem to me, that I would not have doubted that the same thing should be written in the same Moral Work composed by me, which I dedicated to that same Pontiff and took care to present, and for which another testified to me as a witness from his own knowledge and from what he had seen (for the schedule of the Pontiff himself was viewed with his own eyes); and therefore I thought that others who are indifferent towards both sides of the question could prudently and not without reason also believe this.

What remains is this: if my adversary, being moved by a good intention, wrote that, I also hold for certain that I was not induced to write it by any adherence of mind or inclination (for indeed it would have been best after I had dispensed with the repose of this world's labors and placed all my soul in the whole of eternal salvation, to contend against what would lead to her damnation); but rather moved by a good and upright intention, so as to free those who had contracted a habit of hating the dead, and who, despite their erroneous belief (in my judgment), considered that grave sin which was asserted against them, yet continued to approach it. Thus, in order to ward off these maledictions. But what my adversary willed to call an oblation, and this omission prompted by false zeal, I make excusable, knowing that He is Lord who judges me. To these things I append a responsive letter to the reply made to me by the most reverend.

Abbate. D. Bartholomaeo de Marco Basiliano, cui hanc epistolam meam perpendendam misi, virò quidem maximi pro ejus doctrina habito, tum apud ipsius religionem, quò præs- tantissimis muneribus eum decoravit, tum etiam quoquoversim Neapoli, et Romae, etc., magistro in sacra theologia, quam ipse per plures annos sum omnium plenus docuit, et 30 aut 40 annos in edepriendis confessionibus exercitato. I was in suspense whether I should refer to this or omit it until the sequel of his letter; but counsel has been given me for two reasons why I should do so: 1. that all

may know me, and henceforth act more cautiously, and not through adherence to my own sense be deceived, as my adversaries have already too often deceived me, who was always accustomed to solicit the advice of other Doctors; 2. that it may appear how those eminent men estimate both mine and the opposite opinion at that time.

The following letter is addressed to you with the utmost respect: Reverendissime. Father, Sir and Father. Col.

For a long time past I have had the consolation of reading your erudite dissertation on the imprecation of the dead, maintaining that it is not a grave fault to curse them, as is my own sentiment and that of wiser people with whom I have often discussed this matter. Now through your goodness you send me the Response made to one of your contradictors, in which I have admired your doctrine, and by adding reasons it has been rendered almost demonstrative; nor could I find any foundation on which your contradicter might defend that it is a grave fault, seeming to me the reasons adduced by him to be of no weight at all, as I read in a little book sent to press by himself and which V. The Most Reverend has firmly confuted them, and is presently confuting them.

Certainly I do not understand how it can be a mortal sin to curse the dead. I praise, however, his moderation in calling this judgment probable, namely that it is not a grave fault to curse the dead; he should rather have called it morally certain, and consequently its opposite, which is defended by his opponent, morally false, and of weak and slender probability. Therefore I have neither taken away nor added nor changed anything from his learned writing; and I pray the Lord that He may enlighten the mind of His contradittor and of some few companions who pride themselves in finding fault with every small action.

V. Meanwhile, Most Reverend Sir, do not hesitate to bring to light the aforementioned Apologetic Response, for it will be applauded, just as all His other works have been. I commend myself to your prayers, and bowing to you with every respect, I kiss your hands (4). Of V.

Most Reverend Sir. Lady of the Lord 44. June 1758.

Bartolomeo di Marco Abate. I annex these few. Prefacing the Most Reverend Abbot, as he writes, (1) That is: Most Reverend Father, Lord and most beloved Father!

Long ago it happened to me that I read your learned dissertation on the

malediction of the dead, in which you contend that it is not a grave sin for them to be maligned; this opinion is also shared by me and by very wise men with whom I have often discussed this matter. In the present instances, however, which are yours by humanity, you send me a response that was given to some adversary of yours, in which I have observed your doctrine, and it seems to imply my opinion as merely probable. This has not been said by me; I merely said that it is sufficient for something to be considered as lacking a grave culpable action if it appears probable that it is not grave.

However, I did not wish to render judgment whether my opinion is morally certain, since I would commit it to the judgment of the wise; but nevertheless, I have come to consider that opinion more probable than not, and two [reasons] for this. Recently another letter from the adversary has appeared, to which we deem it minimally necessary to respond: what we have already responded suffices. If however the adversary perchance thinks that in controversies those who lastly write remain victors, we very willingly concede such a victory to him. ## CAPUT II. ## DUBIUM I. ### What is a vow? 113.

What is a vow? 115. What are true oaths? 115. To say: By my conscience, or by my soul?

Is it to say: I swear that it is so? 137. To say: So true is it, as the sun shines, a truth like that of the Gospel? An swear by creatures? 133. — R. Juramentum est invocatio tacita vel expressa divini Numinis, tamquam primae et infallibilis Veritatis, in testem aliquid de re.

This invocation consists in this, that he who swears may, so far as he is able and willing, take God to witness and manifest what he swears (if and when it shall please Him, whether in this life or in another), as something which by Himself God knows to be true and established as if demonstrated by reasons. I do not know upon what ground your adversary fortifies himself in this opposition, for there are no reasons derived from him (as if they were taken from his brief and extracted by him), which have any weight; these you, most reverend Lord, have solidly refuted and refute even now again. I certainly cannot grasp how it can be a mortal sin to curse the dead.

I also commend the moderation with which you have used your judgment in affirming that malediction against the dead is not a grave culpability, but merely a probable name, whereas you should rather have said it to be morally certain, and thus opposed to the opinion of your adversary,

morally false and weak in probability. Therefore nothing comes to me that I should detract from your learned dissertation or add to it or change anything in it. I pray to God that He may enlighten the mind of my adversary and the few patrons who glory in seeing even a small fault in any action.

You, most ready to speak, do not refrain from bringing forth the said apologetic response into the light. It is not meet for Him, as in all other works of yours, to receive public approval. In thy prayers commending me, and with every token of reverence kissing thine hands, O Lord, Mother, on the 14th day of June, 1758.

Most Reverend Lord, your most humble and lowly servant, and most devoted and bound in devotion, Bartholomew di Marco Abbà. "Thus commonly DD." Saint Thomas Aquinas, II-II, Question 89, Article 4.

Boe. d. 6. q. 4. Part. 4. Mor. c. 4. 4. Tract. 3. c. 4. ## Unde resolues: 434. — « 4. As regards the internal forum, whoever has an interior intention or appears to have a formal or virtual intention, and invokes God as witness, whether by these words, those words, by signs, or even without any use of words at all: so that if anyone uses non-significant words for a vow, and yet considers them to be vows, he truly makes a solemn promise; and conversely.

Sanct. l. 3. c. 4. . 4. t. 3. e. 4. As regards the external forum, what formulas of swearing have a reason, and consequently which words can licitly be used in conversation, is evident from the following. 2.

When there is doubt regarding the intention of the one swearing, it is customary to judge according to » 3. The true reason for the oath is contained in these formulas: I invoke God as a witness, or I call upon God as a witness. Item, auf meinem Eid, — bei meinem Eid, (juro, juramentum facio, addo meum juramentum), nisi aliud de usurpantis intentione constet, quia multi ita loquuntur, v.g. ioh schwere dir einen Eid, — bei meinem Eid, hoc vel illud faciam; quorum tamen mens non est serio id jurare, sed tantum iracunde et gravius affirmare. c. c. 2.

4. Faith from priests is accustomed to be required instead of an oath by means of their consecration and that formula of princes, "By our princely ear, or fidelity," (mea fidelitatem et honorem obstringens vel obtestantis mei principis) even though they are not oaths, yet in the forum of the market they are received instead of a promised oath: as if from illustrious or noble persons, "By my noble ear, fidelity and faith" (meam fidelitatem et

fidem obstringens vel obtestantis mei qui sum nobilis). See » 5. These are the formulas: Deus novit, Deus testabitur suo tempore, caram Deo loquor, Deus novit omnia, Deus videt meam conscientiam; censentur tantum narrativè proferri, non invocativè (atque adeò non sunt juramenta), nisi aliud constet, aut circumstantiis probetur.

Bonacina qu. 4. p. 2. ex Suarez, Les- Similarly saying: Deus vivit, Deus est veritas, non est juramentum, si enuntiativè profertur, ut Cajet. tract. 47. c. 2. punct. 3. num. 25. At Salamanca. with . "6. They are not vows which are spoken in the manner of a pledge: "Cut off my ears if it be not so," etc. See c. n. 42.

See n. 443. Chapter 2. On the oath. Dub. 4.

7. He does not truly swear who, in order to avoid an oath, is compelled to say that he swears by everything through which he can: because, since there is no thing by which one can lawfully swear without necessity, it is considered that he intends to swear by nothing. 8. Non verè juret, qui ut vitet juramentum coactus dicit se per omne id ju-rare per quod potest: quia cùm res nulla sit per quam absque necessitate jurare licitè possit, censetur per nihil jurare intendisse.

They are not true oaths (which confessors and catechists warn against, lest out of erroneous conscience a sin be committed), truly, certainly, in truth, by my faith, by the faith of a good man, of a good Christian, of a priest, or of a king. Thus according to chapter 2, point 3, number 23, with Soto, Suarez, and Sanchez: 135. — Neither by my conscience over my own conscience, etc., as is stated in question 4, because they signify that one speaks from the dictate of conscience and knowledge of truth; nor is God brought in as witness. It would nevertheless be a vow to say, per catholic faith, per holy Gospel, because then it is deemed that God, the author of that Faith and Gospel, is brought as witness: See therefore say: Per my conscience, upon my conscience, in conscience, is not a vow, as taught . 2. c. 42. dub. 2. n. 4. . praecept. n. 47. ac . n. 28. cum.

Villal, quia nullus in testem adducitur, et sensus est: Quod dico, est quod mihi dictat conscientia mea. The same seems to be held true, according to the author mentioned above (Instruz., etc.), if you say: Per conscientiam animae meae; for conscience is primarily intended and named there, not the soul. Otherwise, if you say: Per animam meam: they consider this to be a more probable true oath, as stated by Renzi de jur. q. 17. And because in the soul God shines forth singularly, and then it is considered that a witness has been adduced.

See the aforementioned n. 129. vers. But here. 136. — Likewise to say: I swear thus to be the case, is not a genuine oath, because then neither explicitly nor implicitly is divine testimony invoked. Thus in the case of an oath due to the vow, because then the oath is sufficiently determined to the true oath through the preceding question. 137. — « 9.

He does not swear who says, as true as the sun shines, as here I sit, walk, etc. Wherefore, even though the comparison be false, it is a lie, since no witness is invoked. It is likewise said, if you say that what I say is the Gospel, it is like faith, it is of faith etc. To say this is true in this manner, as the Gospel, does not regularly constitute a vow according to n. 27. And the same is held by the author of the cited book (Instruz., etc.), because these words denote rather an assimilation than an invocation, as Bus. will soon subjoin below: « 10.

Although these comparisons and similar ones are true, as true as that God is in the venerable sacrament, as truly is Christ in it, as truly is the Evangelium: likewise, I am so innocent as B. Virginis, vel S. Francisci, etc., communiter videantur continere juramentum cum blasphemia; id tamen non satis apparet, quia nullus in teste invocatur. Neither seems to be blasphemy if it is true, and the mind of the one uttering it signifies only a likeness, so that the sense may be: this to be true in its manner as another is true in its manner.

Then indeed it would be blasphemy if one were intending to usurp and signify such a great certainty (according to equality) in his speech as is in that very truth of faith. . mor. c. 31. 438. — « 14: Not a vow, when someone swears by creatures in which nothing of divine goodness specially shines; because then they are not considered brought into relation with God: as if you say: I swear by this beard, garment, etc. It is, however, considered a vow when made through more noble creatures; for then the Creator of those things is received, who dwells and shines in them particularly: thus, for example, when one swears by heaven, it is understood that he means its inhabitant; by earth, him whose this is: footstool; by temple, him whom they there worship; by some sacrament, him who instituted that; by cross, him who was fixed thereon; by touching or naming the Gospels, he whose those words are. p. 4. n. 4. . ll. cc. » DUBIUM II. How manyfold is the oath? Fourfold divided be the oath? Up to n. 14. 143 Are all oaths of one species? Is it an oath: May God punish me if I speak falsely? 439. — « Resp. » Certain divisions are commonly affirmed, but only accidental ones: those which do not change the species, so that distinction in confession is not required. First, in verbal, real, and mixed forms, since either words alone are used, or some action: such as

raising of fingers, contact with a cross, a scepter, gospels; or both words and bodily action together, whence it is called a physical oath.

See 440. — « Secondly in invocation or contestation, and in execration or imprecation. » This is that by which God is simply invoked as a witness: but this, by which He is not merely invoked as a witness, but also as a judge, when one swears to love Himself or another beloved, or to subject something or His own possessions to God for punishment if false speech is uttered; thus may God love me and help me: may God punish me, make it so that henceforth I never rise whole: nor see my spouse or children alive today: take me away by sudden death: damn me forever: upon my soul, etc., in which, when one falsely swears, whether the other species of malice against one's own charity or against another's is more closely joined, the scholastics are in controversy. They deny, etc., because it is not customary for anyone in Chapter 2.

By the curse of perjury. Dub. 1. • and even to one's friend such a fear to be invoked from the heart: but the petition thinks that God will not be made to do so. See Bon. d. 4. q. 4. p. 1. 144. — "Tertio in assertorium, et premissorium."

That is which the past or present is affirmed or denied; but this is that by which something future is promised. Let someone add a communicative term, for instance, through God I am yours. But this can be referred to the promissory.

In conjunction, there is no need to explain whether you have sworn by God or by Saints, because it is of the same species of malice, since every oath always intends to bring God as a witness. Is it asked, whether all these oaths are of the same species? It denies . 2. punct. 2. n. 48. et 49. cum Set. . etc. 143. — Notandum autem, quod predicta verba: Occidur si hoc non est, et similia, quamvis vera sint juramenta, si per modum excrationis dicantur, quia significant: Deus quem in toto iuxta me occidat si hoc non est verum; ceterum communiter non continet nisi quamdam sponsionem seu pennam obligationis et significat: Si non est ita spondeo meam vitam vel pane mortis me submitto. Thus. punct. 3. n. 26. cum ... Bus. d. 4. n. 6. 3. o. 2. n. 286. . 52.

But otherwise, if God is there explicitly named, saying: Deus me perdat, si mentior: because then God is invoked as the avenger of falsehood, should it happen that it fails. . . oo. However, to say: Habeor ut hæreticos, si hoc est falsum, is not a true oath: just as neither is it, speaking regularly, to say: Tot Angelis tollant animam meam, quot vicibus hoc feci. Or: May God so favor me, as etc. Ita . n. 27. cum . It is improper to say: I swear by this

cross, which has been shown to me or signed as my own cross. . n. 24. cum . and DUBIUM III.

A, et quando licetjurare? 144. Is it permissible to swear? And what is required for a lawful oath to be sworn? 145. What about the required judgment?

What about justice? Whether there is a mortal defect of justice in an asserted oath? What about those who say, "By God, I will kill you"? 147.

What about the required truth? What certainty is required for a vow? 149. May it be permitted to swear a false oath knowing that one will perjure oneself? 150.

Would rustic mortal sinners be accused if they were to perjure themselves? 144. "Resp." If a vow is made in due form, it is lawful by faith. And indeed it is an act of religion, as all teach.

Then it is made in a debito modo when these three things are observed: 4. It is a judgment which demands that with discretion, prudence, consideration, and reverence it be made either necessarily or for some grave cause. Justice is required, that which is sworn be a just, lawful, and honest thing. 3.

Truth is such that it must either be a true thing, or at least be deemed to be true on account of some weighty reason: so that as the lesser or greater defect in any one of these things is reckoned up as less or greater injury or irreverence towards God, so too a lesser or greater sin is committed. ## Hence the resolution: 445. — « 4. As regards the judgment, if this alone is lacking, it is most probably only venial: as if someone were to swear without necessity, either from some levity of mind, or from habit. See Chapter 3, Article 6, Note 22.

» • 2. However, even here it is possible to sin mortally or venially, according to the quantity of negligence which one admits in the investigation of truth by swearing, either through omission or correction. And thus mortal is the state of those who do not abolish the custom of swearing without attention, whether this which they are accustomed to swear be true or false. 146. — « 4.

Concerning justice, it sins mortally he who swears that he will do a mortal evil thing, such as to kill someone; because it is a grave irreverence to obligate oneself to mortal sin by divine authority, thus two evils concur

here: one, that he wills the evil itself, and the other, that he uses the authority of God against it with an attitude of hatred towards all evil. . 2. c. 42. d. 3. This certain is in a promissory oath; but it is a question whether there is a grave defect of justice in an assertory oath if someone boasts with an oath about some sin? The first opinion affirms with Tolet. 1. 4. c. 24. n. 40. et 41. and Sot. tr. 47. c. 2. punct. 5. §. 4. n. 46.

But more probab ly it should be said, that there is no grave defect of justice against religion, as in 1. 4. c. 3. n. 6. 3. c. 4. n. 33. et . n. 47. cum . et Leand. Reason, because in a promissory oath, that is to say a mortal one, because an oath is taken to confirm the will to execute evil; but in such an assertion it is not taken to confirm complacency, but merely pronounced to make others more certain of their own sin, which is nothing but a certain semblance of venial lightness. Otherwise it must be said, as the aforementioned authorities have rightly pointed out, if anyone were to assume a vow for the purpose of confirming a detractive act, because then the vow is taken as a means to render another person aware of their infamy.

Here however it must be noted that words spoken out of anger, namely: By God, by Christian as I live, I will kill thee, are commonly not grievously sinned against, because they are excused most probably either through ignorance or through want of deliberation. Thus agrees the author cited in the book (Instructio, etc.) "5." He, however, sins venially who swears to do a thing that is venially evil, namely: vain, or useless, or frivolous; for there it is reckoned as only a slight lack of reverence.

Bonaventura ibidem capitulum. (Tantum vero hoc sentiunt Tanen.) Sper. cum March.) "6. Item, peccat venialiter, qui jurat aliquid contra consilia evangelica: ut, se non ingressum religionis, non daturum eleemosynam aut mutuum. . 147. — « 7.

As regards truth: when this is lacking, mortal sin is committed, because there is a grave irreverence towards God; indeed, when it is brought as a witness to falsehood, it seems either that one does not know the truth, or wishes to deceive by bearing false witness, or can be deceived through lying. This injury excuses not the lightness of the matter: for whether this be grave or light, serious or jesting, it is always equally repugnant to God to bear false witness; and such a vow is called perjury. St. Thomas, II-II, qu. 89, art. 7, among those condemned by Innocent.

XI.) "Now however," and when perjury can be venial by accident, "(Namely, due to a lack of reflection or attention. c. 2. paucat. 5. §. 4. n. 38. et 39.) see Escoò. tom. 4. cap. 3. n. 6. " 8. Neither is excused he who

swears truly, if he thought it to be false, nor he who swears for certain, concerning which he himself doubts, even though the matter itself be true. » Sot. c. 148. — For a proper oath to be required, absolute and entirely infallible certitude is not necessary, but suffices some moral certitude or certain probability which reaches to some degree of moral certitude.

Thus. III. Qu. II. Sec. IV. Num. 6. But 3. cap. 4. n. 40. with Val and ibid. n. 42. with the common opinion, and ibid. §. 2. n. 49. more explicitly state that in a vow or assertion or promise, sufficiency is required for the probability of the truth asserted, or of the fulfillment of the promised thing; but it must be understood that there is not a probable reason in opposition to this. Hence they say, that something can indeed be affirmed by means of a vow, which has been heard from a person so worthy of credit, that it morally makes us certain.

This however does not apply in judgment. . §. 4. n. 44. cum . 444. 146. — « 9. He sins equally gravely who demands an oath from another, knowing him to be a perjurer. Receive it, unless there be a just cause and necessity which demand it: (They say however 14. d. 4. p. 40. n. 9. and Eliel de jure n. 410. suffice for a useful and honest inquiry.)

See what is said in book 3, n. 77: "for then perjury follows solely from the perjurer's malice, and another is not morally deemed culpable for that reason, when he makes use of his own right." That testa-ment outside of judgment rarely has a place among private individuals. S. Thom.

Question 29, Chapter 3, Article 43 and 44, Chapter 3, Article 8, Section 40. He did not sin who swore something which he himself in good faith and with reason believed to be true. 450. — « 44. It may seem that some simple people can be excused from mortal perjury repeatedly on the grounds of inconsideration, when they assume certain juratorial formulas, such as: By my soul, may God punish me.

Even though they know that it is called a vow, nevertheless they do not grasp that to swear is something grave and to invoke God as witness, but only comprehend some confused notion of evil that is not so momentous. See c. 44. But it must be noted that commonly peasants do not grasp the gravity of perjury, for those who confess their oaths make little or no distinction between true and false oaths; and this I have already understood from practice in missions for some time past.

Wherefore I deem it more fitting for confessors to abstain from instructing such persons in a grave sin, which is truly present in perjury, namely, that

material sins in those who have such a habit of perjuring themselves not be made formal; according to the general rule, as Bus. teaches in sacr. pen. Lugduni . etc. Vide librum sextum, n. 640. Nevertheless, such customary practices are rightly strongly rebuked, so that henceforth they may cease to swear falsely.

However, it is not always expedient to admonish such a raw penitent regarding the gravity of perjury in this manner, if the warning be feared lest it prove ineffectual. DOUBT IV. Is it permissible to use equivocation in an oath? 151 Is it permissible to swear with amphiboly? 152 With restriction of mind? 153 Cases are resolved by the confessor affirming that he does not know the confessed sin 154 From the accused, concealing a witness not properly interrogated. 155 What if he is properly questioned and equivocates in his oath? 156 And must a capital criminal be held to confess the crime? 157 When questioning a penitent about a confessed sin. 158 About a pauper who lacks necessaries regarding another's property. 159 About a debtor who is otherwise not bound. 160 When asked by a judge, whether he has spoken with the accused and similar matters? 161 By a creditor asserting that nothing has been settled for him. 162 By an adulterer denying the crime. 163 Regarding requisition to lend. 164 About a merchant, etc. 165 By a servant affirming that his lord is not at home. 166 Regarding admission to the doctorate. 167 By one asserting acceptance of money which he did not receive. ## Cap. 2.

Of the oath. Dub. 4. Concerning one who asserts a falsehood by adding something submitted under obedience: Is it permissible to equivocally swear without being asked? See other cases in Busemb. Is it permissible to swear without having the intention of swearing? (But see Fustis n. 172.) Dub. 5.) Quæritur an simulario sit aliquando licita? 454. — « Resp.

To swear with equivocation when a just cause "is" present, and the very equivocation is licit, is not evil: because where there is a right to conceal the truth, and it is concealed without lying, no irreverence is committed by the oath. And if it be done without just cause, it will not indeed be perjury, since at least according to some sense or mental restriction it truly swears; yet it will be of its kind mortal against religion, since it is a grave irreverence, tending to deceive another in something serious, by usurping the oath. Thus commonly D.D. ... 3. cap. 6.

For greater clarity in saying and expressing these things regarding this difficult matter, many distinctions are to be made. First, it must be distinguished that one kind of ambiguity is either equivocation, and another is mental restriction. Amphibologia triplici modo esse potest: I. quando verbum habet duplicem sensum, prout volo significat velle, et

volare.

II. Cum verbum habet duplicem sensum, prout volo significat velle, et volare. When speech has a double sense with regard to its principal meaning, for example. This book is Peter's; it can signify that Peter is the lord of the book or that Peter is the author of the book.

III. When words have a double sense, one more common, the other less so, or one literal, the other spiritual, as in those words which Christ spoke concerning the Baptist: He himself is the Elijah. And the Baptist said: I am not Elias.

In what sense the spiritual men say that delicate foods are noxious to them, namely for mortification; those who are afflicted with pains say that they fare well, namely as regards the robustness of the spirit. Cardenas diss. 49. n. 47. Thus also whoever is questioned about something that it is expedient to conceal can respond by saying no, that is, he says the word non; he doubts concerning this, but, excepting better counsel, it seems unwarranted, since the word has a double sense; for it signifies both to bring forward and to assert, and in our sense to say is the same as to bring forward.

Given his premises, it is certain and common among all, that from a just cause it is licit to use equivocation in modes explained, and to confirm it with an oath. Thus. 2. cap. 42. n. 47. Card. diss. 49. n. 35. . 47. de juram. cap. 2. punct. 8. §. 3. n. 415. ex S. q. 2. qui dicit: Utilis simulation, et in tempore assumenda; quod explicans S. Th. 2. 2. q. 414. art. 4. ad 2. ait: S. Hieronymus utitur largè nomine simulationis pro quacumque fictione.

Reason, because then we do not deceive our neighbor, but rather allow ourselves to be deceived for a just cause, and on another side we are not bound to speak in accordance with the minds of others if a just cause intervened. Potest autem justa causa esse quicumque finis honestus ad servanda bona spiritui vel corpori utilia. Whether, however, it is a mortal sin to swear with amphiboly, or with restriction that is not purely mental, as will be explained below, without just cause? condemned. abstain.

Innocentium. XI. item. Arm.

Because book 8, chapter 6, note 21. The same holds true for the common assertion, as he asserts. But it is cited unwarrantedly: since it follows contrary to 1. sect. 5. n. 64.

Cajetanus 2. 2. qu. 89. a. 6. ad 4. dub. 2. cum Soto etc., item Lasius lib. 2. cap. 42. dub. 9. n. 48. 14 d. 4. p. 7. n. 3 et probabilem putat 3. The reason for this probable opinion is that in such a vow there already exists truth and justice; only judgment and deliberation are lacking, whose deficiency is venial only. Neither does it hinder what he says.

Nevertheless, it is to be received with the aforementioned judgment that for such a vow (except in judicial matters and contracts) an absolutely grave cause is not required, but any reasonable cause suffices, such as to liberate oneself from importunate and unjust questioning, as stated by Satm. ibid., n. 409. with Val. etc. Roncay. de jur. e. 1. q. 2. r. 3. Elbed n. 129. Here however it is to be noted 4. when Note: 1. when, that words which offer greater occasion for error demand a greater cause; hence they say that when words scarcely suggest any reason for erring, as are words per se equivocal having an equal double sense, then the slightest causes suffice for error. 458. — The restriction of lying is either mortal in its own right, because it cannot be perceived by others: or else it is mortal with respect to something extrinsic that can induce it.

Restriction: pure mortal, nowhere is it here, nor a vow upon the same, so that it may be weak. Three propolitibibus condemned by Innocent. XI. in quibus prima p. 16. dicebat: Siquid est solus, vel supra alios, sive in terragantem, sive propitiis agenti, sive terratenatis causis, sive gratia quocunque. Almost all legal matters, when alleged on this faith, what truly focuses, understanding beneath some other thing, what does it not do; either another way than that in which it was, or what is added by the prophets, truly does not lie but is, perjured.

The second n. 27 said: The just cause user of these amphibologies is when that which is necessary or useful for the preservation of bodily health, honor, and the defense of domestic affairs; or for any act of virtue, is such that then the concealment of truth is deemed expedient and diligent. Third n. 28. says: The just cause of the user of these amphibologies is when it is necessary or useful for the preservation of one's own body, honor, family affairs to be maintained; or for any act of virtue, so that then the concealment of truth is reckoned expedient and diligent. He who, through commendation or gift, is promoted to magistracy or public office may, with mental reservation, give a vow which customarily demands compliance with the king's mandate, without regard for the intention of the one requiring it, because he is not bound to acknowledge an occult crime.

And from this it follows that a restriction not merely mental but also with an oath is licit for a just cause if such can be perceived from the

circumstances. That was approved from John 7:5 and 8. Where Christ said: I do not ascend to this feast day.

And yet Scripture narrates that later he ascended: "I do not ascend," he understood, openly, because the disciples asked, but I ascend secretly. Similarly from y. 36, where the Lord said: No one will know on that day... neither the Son, understanding covertly for the purpose of manifesting it, as the Doctor explains in the Prologue. Thus too understands St. Thomas, III Pars, Quaestio 40, Article 2, ad 2, saying: It is said that one does not know the day, because it does not make one know.

That is, even if He had said, "I do not know for the sake of making it known to others." And the same is held by St. Jerome. Saint Ambrose, Saint Athanasius, Saint Basil, Saint Hilary, etc., as Suarez testifies in III, p., q. 40, a. 2.

They commonly hold this opinion, tr. 8, c. 2, § 3, 3 l. 4, c. 43, n. 7, v. Meanwhile, Palud. in 4. d. 9. q. 3. a. 3. Conclusion 4.

Adrian. in IV de sacramento confessionis cap. 6. ad argumentum. Major. in the fourth part, forty-fifth question, forty-eighth article, fourth objection. Revealing a secret, member 3.

Wigandt. tr. 40. exam. 4. n. 64. resp. 3. Cardenas in 2. crisis, diss. 49. n. 84. (qui in prop. Innoc.

XI. dissertatione 49., n. 48. cum 3. part. 1.˚n. 287. de iure. p. 273., n. 490. titulus t. 2., p. 52., n. 144. Sporer tr. 3. c. 4. n. 145. . 27. Innoc.

XI. n. 4. et . 47. c. 2. punct. 8. §. 3. n. 147. ubi dicunt, hanc sententiam esse communem ferè omnium DD. The same is felt in part 2, c. 3, art. 5, at the end, with Vanroy and Boudart, saying that even stricter theologians deny these restrictions to be widely mental (which is the same as not purely mental), and this is not illicit according to St. Augustine who in book against liars, c. 40, says: Although every liar wishes to hide what is true, yet not everyone who wishes to hide what is true is a liar. The strictest Consentius, in his Treatise 4, Dissertatio 2, Chapter 4, in response to Instabis, also agrees; for, by explaining John 7 regarding the ascent of Christ to the feast day, he says that Christ employed obscure words in which a prudent man could easily open up the sense through interpretation.

D. Thomas favet (ut rectè ait Wigandt) 2. 2. q. 69. art. 2., ubi: Aliud est

veritatem tacere, aliud falsitatem proponere. Item q. 440. art. 5. ad 4. dicit: Non est licitum mendacium dicere ad hoc quod aliquis alium a quocumque periculo liberet, licet tamen veritatem occultare prudenter sub aliqua dissimulatione ut Augustinus dicit in lib. contra mendac. The reason for this judgment is that, if it were not permissible to use a non-mentally pure restriction, there would not be a mode of secretly concealing something licitly, if one who seeks not to reveal without harm or inconvenience; which would indeed be equally detrimental to human commerce as falsehood.

The damnation having been carried out by the Pontiff regarding the restriction, it is rightly understood to refer to the pure and strictly taken restriction; for only that true mental restriction should be called a restriction of the mind which takes place solely in the mind and thus remains hidden, and can in no way be known from external circumstances. 453. — Hence inference I. A confessor can also affirm by oath that he does not know a sin heard in confession, understanding it subintelligently, not as a man but as not being the minister of Christ; this is taught by S. Th. 2. 2. q. 70. art. 1. ad 4. (who nevertheless explains n. 75 differently regarding that word nescire through science which is useful for responding); similarly Sporer de praec. n. 419 et n. 149 and others commonly hold this view. Reason, because the inquirer does not have the right, except to a knowable and communicable notion of knowledge, which is not that of confession.

And this is also true even if he asks otherwise, whether he heard it as a minister of Christ. . 27 and 13. . 2. praec. c. 4. et . n. 430. cum aliis, because the confessor always has to be considered as responding as a man, not as a minister of Christ. Hence they say in Cardinal [name omitted]'s Dissertatio 19, note 39, at the end, and in 67 and ad locum n. 1734, that whenever one is bound to conceal another's infamy, he may lawfully say, "I do not know," namely, "I have no useful knowledge with which to respond": or "I do not know" as something that cannot be made manifest, just as the Cardinal says with Lugo at the aforementioned place n. 43 and 44. And si quis temere petat a confessario, an audierit tale peccatum in confessione, bene potest respondere: Non audivi, scilicet, ut homo, vel ad manifestandum, Card. cum 154. — II.

The defendant or witness, when improperly interrogated by the judge, can swear that he does not know the crime which he in reality knows; understanding thereby that he does not know the crime concerning which it is legitimately possible to inquire, or does not know it for the purpose of giving testimony. Thus 1. part. 31. rubr. 5. Sporer from the second precedent chapter, chapter four, note forty-two point four and forty-one

point two, fourth part, chapter four, precedent chapter four, question two, response three, third chapter, note twenty-eight and twenty-six with etc. from the same D. Thomas, second part, second section, question sixty-nine, article four.

The same holds if a witness is not bound to testify from another head, namely, if it be certain that there was no guilt in the crime, according to 17 c. 2 punct. 8 § 6 n. 439 and 145, or if he knows of the crime but keeps it secret, when no previous infamy has preceded, as Cardinal ibid. n. 51. The defendant, however, or the witness who is legitimately interrogated by the judge, ought not to use such equivocation, because he is bound to obey the superior command justly. It is common, n. 146. with Sot. et al., cum Bus.

And the same must be said about oaths in onerous contracts, because to one another injury would thereby be inflicted. Accept it in judgment if the crime has been altogether hidden: then indeed the witness can say, nay, is bound to say, that the accused did not commit the offense. § 2, n. 4. with § 3, n. 2. according to the common, because then the judge would be interrogating unjustly. 455. — But here it is asked: whether such an accused, or one who contracts by equivocal oath, can be acquitted unless he reveals the truth? Some deny it not unreasonably, but more reasonably affirm it according to 2. c. 7. n. 8. and according to 147. ibid. concerning a lying witness. And thus each may be absolved, even if he does not reveal the truth.

They are bound, however, both to satisfy, if they can by another way. But if they cannot, they say that they are held to be brought again to judgment to reveal the truth. But even I would be constrained, if they were altogether impotent to satisfy both in the present and in the future. 456. — It is asked whether a defendant legitimately interrogated may deny the crime; even though under oath, if serious harm threatens from his own confession?

It denies. 44. according to art. 4., paragraph 2; and indeed more probatively, because the defendant is then bound to suffer that damage for the common good. But sufficiently probatively Lugo in the just. d. 40. n. 45. . 3. c. 4. §. 3. n. 5. cum art. 4. n. 2. Sporer de secondae praecedenze caput quarto nomen quadringentum quinquadecim item nomen quadraginta sex et sextodecim dissertationis quadraginta novem numerus septuaginta octo cum .

Some and Filius et alia plurimae dicunt posse reum, si sibi immineat ponenda mortis vel carcere aut exilii perpetui, aut amissionis omnium

bonorum, triremium, et similia negare crimen, etiam cum juramento (saltem sine peccato gravi) subintelligendo se non commississe, quatenus teneatur illud fateri modo sit spes vitandi poenam. Reason, because human law cannot gravely oblige men with such great burden. And he adds.

See to be said in book 5. n. 274. 457. — III. Penitent, interrogated by the confessor about a confessed sin, can swear that he has not committed it, understanding thereby what the confessor has not stated. Cardinal Cusanus, Dissertatio 49, num. 48, num. 47, caput 2, punctu 8, sectio 3, num. 418, caput 3, num. 44.

Sporer from the second precedent chapter, book 4, number 405, article ab Inn. Eleventh. 458. — Fourth. One who is in need of hidden goods for sustenance can respond to judgment that he has nothing. § 6. n. 440.

You would have held similarly, who had concealed goods without an inventory, if he were not bound to satisfy creditors with those goods; he could respond to the judge that he had not concealed anything, understanding by this reference to goods with which he was bound to satisfy. reg. 2. in praxi. 159. — V. He who has received a loan but later repaid it can deny that he received the loan, understanding it such that he should be obligated to pay and . precedent c. 4. n. 422. with Suor. . . Cov. et aliis. Thus likewise, if anyone has been coerced into marriage, he can assert before the judge even under oath that he did not contract it freely; as was fitting. 4. c. 21. n. 8. 22. q. 5. et ibid.

Who is not bound to gabella can respond that he has brought nothing, namely, from which gabella should be due, . with . . n. 444. n. 47. 8. cap. 6. n. 35. and Sporer loc. cit. n. 440. with . Sister. Henry, even if that one had quickly passed through the infected place, as long as he is certain that he has contracted nothing, because it can be understood that he did not come there, so that danger should be feared from him: but to this I by no means acquiesce.

They also admit with Bus.: that if anyone is bound by an obligation to promise money to a thief with a vow, he may understand: I will give you what I owe you, apart from this vow; because they say, such ambiguity can be admitted regarding that promise due to the circumstances. Likewise, a wife, whose marriage is established as null and void, can promise with a vow to one who otherwise would not absolve her, either in judgment or confession, that she will cohabit with her husband, even though she does not intend it, understanding by this of licit cohabitation. 460. — VI. Asked by the judge whether he had spoken with the accused, he can deny it, understanding that he had not spoken with him, in order

not to cooperate in the crime.

Canonical, bound by secrecy, can swear that he has manifested nothing, if truly he has manifested nothing of those things which were gravely kept hidden. Namely, n. 442. those who assert that all these things are readily available everywhere among all authors. Similarly n. 48: si quis invitatus interrogetur, an sit bonus cibus, qui reverà sit insipidus, potest respondere, esse bonum, scilicet ad mortificationem.

Cardenas diss. 49. n. 74. Thus also they say and Croix lib. 3. p. 1. n. 302. that ceremonies may lawfully be offered: The kiss of peace, etc. I offer myself as a servant, etc., because they are received from common use as words material, pronounced only for honor. It is also licit to conceal the truth for a cause; e.g., if someone asks you for money, you may respond: Alas, I wish I had it!

Or, I would rejoice in having, etc. Card. diss. 19. n. 53. 161. — But it is questioned whether, by means of an instrument and with a vow, a creditor can assert that nothing has been paid to him, if indeed part has been discharged according to reality, but he himself possesses another claim from a different source which he cannot prove? It is responded that this can be done provided he does not swear that said quantity is owed to him by that instrument, so as not to cause damage to any prior creditors. Thus [Ita]. Chapter 17. Paragraph 2. Point 8. Section 6. Note 143. With.

Leand. etc., 162. — Whether an adulteress can deny the adultery to her husband, understanding that she reveals it to him? It can equivocally assert that it has not broken the marriage, which truly persisted. And if adultery has been sacramentally confessed, he can respond: I am innocent of this crime, because it has already been removed through confession.

Thus Card. diss. 19. n. 54., who yet observes that it cannot be affirmed with an oath, because for asserting something probability of fact suffices; but for an oath certainty is required. But it is replied that for a vow suffices moral certainty, as we said above in dubium 3, n. 148, cum 17, a. 2, punct. 5, § 4, n. 42, et communiter. The moral certainty of remission of sin can indeed be held when one, being well morally disposed, receives the sacrament of penance.

Regarding the sought-after question, it is said in point 8, section 6, note 144, with Soto, that one cannot deny an adulterous family, because it would be pure mental restriction. He admits that in a state of mortal danger, it is permissible to use the metaphor which is common in Scripture

where adultery is taken for idolatry, as stated in y. 37. Because they are adulterated... and because they have fornicated with idols. But if it is a truly hidden crime, probability with Bus. infra and ibid. et 3. n. 42. with Sot.

Seyr. et Arag. una mulier potest negare cum juramento, et dicere: non commisi; similiter modo, quo reus possit dicere judicii, non legitimè interroganti, crimen non commisi, intendendo se non commisisse ita, ut teneatur ei manifestare, ut . c. 4. §. 3. n. 4. et 2. And . 7. article 4. note 2. 163. — Question 3: Whether one who is required to lend at interest can swear that he does not have money which he actually has, understanding himself as not having it so that he may be bound to manifest his possession thereof? They deny with Soto; for if it could be inferred from some circumstance, namely poverty or the neediness of the borrower, he might well understand that he does not have a superfluity so as to lend.

Thus Rone in 2nd part, question 4, chapter 4, regulation 2 in practice, section 7, article 4, note 2, with etc., Cardinal dissidence 49, note 48, and with 4, note 74, who thus teaches: He who has one necessary loaf of bread truly responds to him who asks for a loan of bread by saying that he has nothing; because he has nothing with which to lend, concerning which alone the question is being asked. And the same is said of money borrowed, if it be necessary to the lord. 164. — Ques. 4. Whether merchants may swear that their goods are dearer than other goods, understanding this with reference to other merchandise? Some affirm, but rightly deny; Probabiliter tamen posse ait Croix l. 3 p. 4 n. 304 cum Gob. quando tales non intelligunt de mero pretio rei, sed computant in eo expensas pro vectura, pro apotheca, etc. — Question 5 an famulus ex jussu domini possit negare ipsum esse domi?

Card. diss. 49. n. 75 admits, that it is possible to plant one's foot in a stone and respond, "This is not here"; because there is no mental restriction: but I do not assent to this, if another in no way can advert to it. I would rather concede when one can say, "This is not here," namely, not in this door or window; or (as the part says in chapter 3, article 5, at the end): "This is not here, so that it may seem to be." Item the Cardinal says that it is possible for him to be understood as having responded when he went forth from the house, understanding this in the past tense; for, he says, we are not bound by this.

Likewise, if he is asked whether the Lord has gone forth this morning, as Croix lib. 3. p. 4. n. 284. Thus also he says concerning the nobleman who is in bed, that it is possible for him to respond to his servant, saying that he is outside, namely, that he is removed from the consort, so that by

customary speech it may be understood. · 466. — Question None. 6: Whether those being admitted to the degree of doctorates can swear with equivocation the required condition, namely, that they have not possessed that science for all those years, etc., if such are equally fit as other doctors? See chapter 2, which affirms, and says that then there is a just cause for such an oath to be taken, so that they may not be repelled who are already worthy.

But whatever this may be, it seems more probable to me that those who are not yet worthy students at Naples, who customarily write with their own hand in seeking matriculation: Declare by oath to be an institute student for the first year etc., when indeed this is not so. Reason, because that word, I swear, or I say with a sworn oath, as we said above in book 4, question 436, chapter 47, part 2, paragraph 3, note 24. Bon. de se non est juramentum, nisi præcodat interrogatio de juramento; sed hæc interrogatio Neapoli vel omnino non fit, vel non fit de vere juramento, sed tanquam de illa scriptione materiali, quæ ex usu communi videtur non apprehendi ut verum juramentum. 467. — Question 7. an possit quis licite coram notariis assere se accipere pecuniam quam vere non recipit?

It affirms that one can improperly give sense to "jurado" pecuniam se pro accepta habere vel accipere, namely, who is morally certain that he will shortly be obligated to pay back the money. And it seems probable according to common usage. 468. — Question 8. whether one may swear to something false by adding a true circumstance, albeit in a subdued voice? They affirm in ibid. punct. 8. §. 5. a. 436. against Torre, who say that, for speech to be true, it suffices that it externally correspond to the concept in the mind, whether by nods or by subdued voice, and through happening so that another does not hear it.

Better still, n. 438, they admit this, provided that in some way it can be perceived by another the said lowered utterance, even though its sense may not be perceived; otherwise if entirely hidden from the other. 469. — « 4. He gravely sins who uses equivocation when not asked but spontaneously swears: because then he is bound to use words according to their common signification, says Tolet, in his book 4, chapter 24; that which does not have the reason of equivocation. 470. — Probabilius tamen . n. 142. in fine cum communissimâ contrarium dicunt, nempe quod quando adest justa causa necessitatis vel utilitatis possit quis uti amphibologiis in juramento etiamsi ad jurandum sponte se offerat. « 2.

Gravely also sins he who uses equivocation when a just judgment is required, from a judge or superior in a serious matter. If however such a vow is made in a matter of slight importance, through jest, and without

disobedience or notable harm to another, it will be merely venial, as probabiliy teaches . 3. c. 5. contra alios: because it lacks either discretion or judgment solely. See « 4.

It is licit to make an equivocal vow, if a vow is demanded unjustly, as v. If anyone demands an oath from one who has no right to demand it, for instance, a judge without jurisdiction: or if he does not observe the order of justice. Item, si exigatur per vim, injuriam, metum, v.g., si vir exigat juramentum ab uxore de adulterio occulto; si latrones exigant à te lytrum cum juramento.

Scyr. l. 4. c. 3. et lib. 1. c. 47. . lib. 2. cap. 4. d. 15. » 474. — « 5. He who merely swears externally, or who merely intends to swear, is not obligated, except perhaps for a reasonable cause of scandal; since he has not sworn, but has merely transgressed.

In however external forum it can be compelled to keep. . num. 44. . 2. c. 4. d. 40. But concerning this, see what will be said later in the doubtful sequence number 412. It is inquired. It is now finally inquired, whether simulation is sometimes licit?

The response is: Formal simulation is never licit when someone intends through an external act to signify something other than what they have in their mind, for this is a lie of deed, as it is taught in 2nd Question, 444th Article, Fourth Part. Material simulation, namely, when one performs some action without intending to deceive another but for his own purpose: this is licita cum jusa causa whenever others can infer that it is being done for another purpose, as stated regarding non-pure mental restriction n. 152. Thus Joshua, chapter 8, licitly flees, not intending to signify fear, but so that the enemies might be led far away from the city of Hai, and the remaining soldiers might rush into the city.

Thus also Christ the Lord at Luke 24, near Emmaus, feigned that he would go further on, not intending that the disciples should believe this, but willing to signify that he had intended to go further, unless invited by them. Thus Croix l. 3. p. 4. n. 298. ## DUBIUM V. ### What and to what extent is the obligation of a promissory oath? 172. That the affirmed truth be doubled in a promissory oath?

What kind of sin, however, is a promissory oath made, and how does it oblige? 173. Whether a grave sin is committed by not fulfilling a promise concerning a trivial matter? 174. Does a vow prompted by fear obligate? 175.

What if it arises from error, or from deceit? An obliget juramentum de re mala, aut vana? 177. What about a vow in favor of a third party? 178.

Does a vow not to play exclude moderate play? 179. Does a vow made contrary to the primary obligation bind? Does a vow owe obedience to the condition of the promise? 181.

How obliges the vow of serving the statute of some college? 182. Regarding the oath of the physicians not to visit, etc. 183. Concerning the vow of keeping silence, speaking the truth, and making reparation. 184.

Is an obligation incurred by a vow made to not know another man while living with a concubine? 185. Does a promissory statement made prodigally with a vow bind? 186. Does a vow obligate one to return to prison?

Regarding the punishment of children or servants for the breach of a vow made by parents or minors. 172. — “Resp. 4. In promissory vow two truths are affirmed: one primary present, namely that the one who vows has an intention to fulfill what he promises; another secondary future, namely that he will fulfill it in due time, which he promises: whether he promise to God, and this is a vow with a vow; or to man, and this is human promised vow. Whereby arises the obligation of fulfilling, if it can be fulfilled reasonably.

Thus commonly the Doctors say: Chapter IV. Volume III. Page 4. Section 6. ### Whereupon the resolution is: - 4. By reason of a defect in the first truth, he who solemnly swears falsely has mortally perjured himself, if either he does not have an intention to fulfill, whether the matter be small or great, licit or illicit; or if he doubts whether he will do what he swears to do or not; or if he believes morally impossible for him to fulfill what he promises: because in respect to this present truth, the promissory is not distinguished from the assertory; hence neither does the smallness of the matter excuse. » (Peccat quidem graviter qui promittit aliquid cum juramento, putans impossible, ut impluat.

Thus in this 17th chapter, 2nd paragraph, point 5, section 2, note 49, with Azor: It is asked what kind of sin is a false promissory oath, and to what it obligates? I distinguish: In three ways one can promissorily swear falsely: I. Without the intention of swearing.

II. Cum animo jurandi. Without the intention of obligating oneself. III.

Without the intention of fulfilling. I. If anyone swears without an intention to fulfill, he indeed sins, and is condemned according to proposition 25 by Innocent.

XI. What she said: When it is licit to swear without an intention to swear, whether the matter be trivial or serious. Reason, because then it mocks divine testimony. Whether, however, one would commit a grave sin thereby?

Resp. affirmatively, if he swears without intending to fulfill the promise; but if truly with the intention to fulfill it, he sins only venially, as commonly recounted 3. c. 6. n. 40. . c. 4. q. 4. r. 3. . lib. 3. c. 3. §. 2. n. 4. . n. 420. Mazzotti. same title. chapter 3. question 3. However, it is rightly understood that a vow should be made in opposition to someone, or before a judge: because then, although it is not perjury, it is nevertheless a serious deception against justice.

II. If, however, one swears without an intention to be bound, but with an intention to fulfill it, Cajetan 2:2, question 89, article 6. Cross book 3, page 4, number 324. Item.

Saint Anthony, Navarre. Scotus, Tambur., and others more commonly hold according to 5.: they maintain that this is mortally sinful both because by swearing thus one falsely signifies himself to have an obligation which he truly does not have; and also because, as Croix seems to think more probablistically, it appears to bring about a serious irreverence to lead God into witness, and to refuse to be bound by His testimony. But very probably the same [holds] 21.

Renzi de jure et Ant. a Spir. He to whom it adheres, according to four holders, this has not sinned except perhaps venially. Reason, because swearing thus, although he does not intend to bind himself, from one aspect does not swear falsely, since he asserts a true statement about his present will; but from another aspect, since he has no intention at all of being bound by the force of the oath, whose intrinsic reason is to induce an obligation of religion, truly he does not swear, as commonly stated in cap. 4, punct. 4, § 3, n. 49 and n. 23.

Spurred in 2. praec. cap. 4. n. 134. etc., et therefore this oath is the same as if it had been made without the intention of swearing, which is a venial sin only when the truth is asserted, as was said above. Whether, however, one who swears thus with an intention to swear but without an intention

to be bound, is bound to keep the oath? The first opinion denies this, firstly because such a vow was invalid, as stated above; secondly because God does not accept promissory oaths unless according to the intention of the one swearing, as it is said in c. Humane aures, qu. 5: Divine judgments hear such words as ours from the depths, which are uttered from within.

Thus it is stated in Decretum, fourth part, eighth chapter, note seven, page forty-six, book four. Treatise 2. On the second precept of the Decalogue. No. 25.

Herein follows reference 4 and 3 from chapter 40, number 8, with St. Bonaventure. Saint Anselm, Scottus, Sylvestris, Gabriel. And Anglo and others with the common, as he asserts.

Thomas in III. d. 39. q. 4. a. 3. where he says: Si autem simpliciter juret absque dolo, tunc in foro conscientiae non obligatur, nisi secundum suam intentionem. And the same is confirmed by 2. 2. q. 89. a. 7. ad 4. If, however, one swears without employing deceit, then he is bound according to the intention of the one who swore.

But he who swears without deceit (as it is said at 448 with Ilium) is he who swears to someone who has no right to any just claim regarding the thing promised. However, the second opinion holds that one is bound to keep the oath. They hold this [to be] . 2. cap. 42. n. 37. (although it is called very probable in opposition) Cajet. 2. 2. q. 89. art. 7.

Suarez chapter 7. Soto, lib. 8. quaest. 4. artic. 7. etiam Valentinus. Sayr.

Fill. 2. d. 4. Question 4. pag. 7. num. 3. et Renzi de juram. pag. 425. Question 5. Reason, because he who swears with an intent to swear already emits a true oath, and therefore is bound to fulfill it, in order to preserve the reverence for the divine name, so that what is truly sworn by him may be fulfilled; nor can he separate from his oath the obligation of fulfilling the promise, since the obligation arises from the very oath itself, whose nature it is to have as its effect what is vowed, lest God be called a witness to falsehood. And herein appears the difference between a vow or contract and a promise; for in the former the obligation depends on the intention of the one who vows or contracts, but in a promise it arises from the very act of promising, whose nature is such that it brings about what is promised, so that God not be called a witness to falsehood.

Both opinions are probable, but the former is more probable: for the reason behind this second opinion supposes as certain that a true vow

without an intention to be bound has been made; nevertheless it is more probable and common, as they assert in 47. cap. 4. punct. 4. §. 3. n. 49. with others as mentioned above, and also in . 25. The innocent. XI. n. 43. (contrary to) what such a vow is not a true vow, firstly because it lacks the necessary condition for the nature of a promissory vow, namely the intention to obligate oneself; secondly because a vow follows the nature of a promise, which it confirms as certain: hence, when the promise ceases to exist, the vow also ceases to exist, and is considered made without the intention of vowing, which indeed, as we have seen, is nothing.

If however no such vow exists, then there is no obligation in regard to fulfilling it. III. If therefore anyone swears without any intention of fulfilling it, but with an intention of swearing and obligating himself, he certainly sins mortally, because then also the truth is lacking at present.

Necesse est autem quod promissum implendum obligetur? The response is affirmative, because at that time the essence and obligation of the oath are operative. Mazzot. l. c. et . 3. cap. 40. n. 5. when S. calls the opposite improbable.

And this must be said: even if he had no intention of obligating himself by virtue of his promise, he is nevertheless obligated otherwise by virtue of the oath; for he says the same thing about a vow, where according to common opinion it is said that if someone does not know that a vow brings with it an obligation, and through this error he makes and then withdraws the vow without willing it, he will not be bound by the vow, because no one contracts an obligation unless he himself imposes it upon himself. See the aforementioned points regarding vows, n. 204. vers. But seek.

I. And see shortly above what was said, where we saw when . Si autem quis injuste cogatur, puta à latrone, ad aliquid pro- mitendum eam juramento, potest licite intendere non vete implere promissum, si relaxationem juramenti obtinuerit.

If however anyone is unjustly compelled, for instance by a robber, to make a promise with an oath regarding something, he can lawfully intend not to fulfill the promised obligation if he obtains a dispensation from the oath. Thus probably Croix lib. 1. p. 3. num. 278. cum. et Diana. 173. — « 2.

By defect of the second truth he has sincerely erred who, having promised what could be reasonably fulfilled afterwards, does not fulfill the promise. This alone is doubted here, whether he who promised a trifling thing with

an oath, for instance, has acted otherwise. » To give another one apple, or a coin for alms, or to chastise one's child, or not to sell in a transaction for less money, or not to wish for the first place or to precede in entering the door, etc., do you say, I ask, that this is held to be guarded against by a grave sin?

Where it is considered philosophically, indeed it seems that this is so, because God has truly been moved as a witness to what will be: therefore if He does not act without cause, insofar as He can, He makes God a false witness. Caj. Val. . 4. c. 22.

Nevertheless, proba- other hold the contrary view, namely that it is a great question whether a small quantity should be given in the transgression of a promissory oath, so that he who promises to give something and truly intends to fulfill his promise when he swears but later does not fulfill it, should only commit a slight sin? The first opinion very probable denies it. Cajetanus sustinet hoc. 2. 2. quaestio 89. articulus 7. dubium 4. 4. caput 22. 2. c. 42. dubium 5. n. 23. dispensatio 4. quaestio 4. parragrapha 44. numerus 2. item Vallaccius et alii secundum caput 2 punctum 5 § 2 nomen 52 apud.

Reason, because then the oath is already violated, in that violation of which there is no small matter given as material. This seems to be the opinion of St. Thomas 2. 2. quasst. 89. art. 7. ad. 3., where he says that if someone is compelled unwillingly to promise something under oath, although later in judgment he may be able to reclaim what he has fulfilled, still during this time he is bound to fulfill the promised obligation: Because it is more fitting to endure temporal damage than to violate an oath. The second opinion, no less probable, indeed perhaps more probable, affirms, and this is held by them: book 3, on oaths, c. 16, n. 2.

Soto on justice, book 8, question 4, article 7, doubt 4. Axor. lib. 5. cap. 27. quast. 2. Castro. tract. 15. disp. 4. part. 6. num. 8.

Saint Thomas, title 10, chapter 4, section 1, note 40. Sylv. v. I swear. 4. q. 4. tr. 3. cap. 14. n. 6. et n. 53. cum Arag.

Say "Sanok." Joannes ad S. Thomam, Rodrig. (nam aliquod perjurium eammitteretur, etiamsi deinde promissio ex justa causa non imperetur) sed solum tamquam auctoritatem praebens obligationi, quae oritur ex promissione coram Deo facta, prout si quis aliquid promitteret coram principe, intendens ex illius auctoritate suam firmare promissionem. Hence they say that, having promised subsequently, he does not fulfill what he

has promised; and it is no longer a sin to perjure oneself because perjury occurs only when God is invoked as witness to the lie; but there is no lying where one who swears has the will to fulfill the promise; yet not to fulfill the promise is not lying, but infidelity, and somewhat more gravely as irreverence, which is offered to God before whom the promise was made; but since the promised thing is not grave, such a kind of infidelity does not reach to serious worship.

Thus also they say in point 7. §: 2. n. 88, with St. Augustine, that if someone swears to keep a secret and later does not keep it, he will not sin gravely unless he reveals that which is secret with grave injury to his neighbor or to the community. "It is certain that if from what you have sworn only a little thing fails, it is not grievous: for example, if you swear that you will not drink wine, you do not commit a mortal sin by drinking a little. Book 4." Because then the insignificance of the matter excuses it. And thus are excused those who swear to observe the statutes of some chapter, college, university, etc., if they later violate some statute thereof in a minor way.

And the same is said of the scribe—and other ministers of justice; just as concerning him who had promised to give a great amount but withheld only a little. Navar. Vide 174. — 4.

You are probably obligated by a promissory oath, even though it is unjust towards you through injury and fear; as if, forgetting the equivocation, you swore to give tribute to robbers and usury to usurers. Because 2. 2. "quæst. 82." etc. Axor nevertheless denies it, p. 4., lib. 4., cap. 14., quæst. 43. In the matter of marriage, because a coerced marriage by reason of fear is null: hence also it seems that an oath extorted from him in contracting such a marriage is relaxed by very law, says he.

Perjury: Is a great question whether an oath extorted by fear obliges in conscience? It is said in conscience, because in the external forum, where it is presumed that the mind of the one swearing has not been affected, certainly such a sworn oath does not obligate, according to this very reason. Verily, concerning oaths. As regards the internal forum, the first opinion denies that it is binding even with Axor, St. Anthony.

Panorm. et aliis apud . lib. 4. d. 20. n. 3. qui eam probabilem vocat, eo Authent. Sacramenta, caput Si adversus venditionem: ubi dicitur, huiusmodi juramenta nullius momenti habenda esse. Hence they say that a promise thus sworn may either be vitiated by fear or liable to revocation on account of fear.

The second opinion, however, is much more probable than that held by S. Th. 2. 2. Question 89. art. 7. ad. 3. punct. 2. n. 16. cum .; item . 57. (qui vocat communissimam) et . q. 7. art. 4. n. 7. (qui vocat communem), which says that such a vow binds. Reason, because we are bound to ensure that what we swear is true, so as not to make God a false witness. Therefore, according to chapter Cam in De Jurejurando, and similarly in 28 and elsewhere as follows, the rule is that every oath must be kept which can be fulfilled without sin.

It is responded that the authentic cited text was either not accepted or expressly revoked by chapters 8 and 45 of De Jurejure. It must be noted that, in the time when one is apprehensive regarding the fulfillment according to the force of the oath, he can seek relaxation thereof from the Bishop, or from whoever has the power to commute oaths, as with Lug. Villal. et lib. 4. n. 747. vers.

Question 2. 475. — "5. You are also obligated, even if the oath is made through error or deceit concerning a minor circumstance; for if the error or deceit pertains to the substance, as for example, if you swear that you will give an ring to another person, thinking it to be iron when it is actually gold. If it is golden, or if it concerns circumstances of great importance, with knowledge of which you would not have sworn, you are not bound.

See 3. cap. 14. n. 41. concerning contract. chapter 4. point 3. note 24. But they consider the opposite more probable.

See n. 187. v. But doubtful; and concerning this vow, see book 4, note 498. It is certain. and n. 225.) 476. — « 6.

It does not impose any obligation if you swear to a bad thing, or to a vain one, or to an useless one, or (as Cajetan states) to an indifferent one, which is neither justified by its end nor by its circumstances; because a vow cannot be a bond of injustice, or of things vain and idle, to which God does not wish us to be obligated. Bonac. and others commonly. Where there is a note that from the oath not to fulfill the vow does not arise, otherwise such a thing illicit and vain, after being changed in circumstances, becomes honest, since according to the law 18 of book 6 it is not confirmed by the lapse of time, which at first did not subsist.

» (When point 7 section 4 number 58. Hence also add that according to § 60., if a vow is made concerning the observance of something forbidden by

law, it is invalid, even though the law forbids it only under penalty; but if it concerns the observance of something permitted by law, then, although such a vow might be illicit, it must always be fulfilled without sin, and even if it be contrary to evangelical counsel. According to § 6., chapter 2, paragraph 4, number 69, with reference to § 44., number 3, or a promise made to a prostitute, although such a vow might have been illicit, according to Molina in the same place, in the middle. Understand this: if the prostitute has already fulfilled her service, then it is otherwise; but if she has not yet done so. n. 55. n. 2. . 88.

Tamen aliter dicendum, si promissio sit irrita jure, quia esset contra bonum commune; ratio quia tunc ipsa impietas illicita esset. Therefore, a vow is not binding if it was made under duress concerning profession, marriage, betrothals, renunciation of secular forum, if he be a cleric: likewise concerning donation by a cleric or by a soldier to a concubine. Thus c. 4, punct. 7, § 2, n. 67, from c. Diligenti de foro competente: When it is asked, however, whether a contract rendered invalid by law in favor only of the promisors themselves thereby becomes confirmed by an oath, so that the promisor acquires the right to justice therefrom?

Auror affirmant; sed probabiliter negant 61 ac n. 53 cum non ex jure positivo; nam licet ex c. 28 dejurejur. etc. tales contractus debeant servari ob juramentum, nullibi tamen habetur, servandos esse ex justitia; et ideò hæc obligatio non transit ad heredes jurantis: et ipse jurans deobligatur, relaxato juramento. See . 64. « 7. You are not obligated to fulfill a vow if you have promised anything contrary to evangelical counsel, such as not to enter religion, not to give alms, etc. Mol. l. 4, t. 3, c. 6.

And although you may sin by such a vow, nevertheless you do not sin by not fulfilling it. Cajet. v. Perjury.

Thus, Article 47, On Oaths, Chapter 2, Point 5, Section 2, Note 58: unless an oath is made in favor of a third party, when . . . as will be shown below. It can be fulfilled only with a bond of weakness, and cannot be commuted into any better work; thus, for example, if you have sworn in favor of someone's utility or grace, religion, provided that it can be fulfilled honestly and without sin. For instance, a student who has sworn to serve the prince, or this one, or that church, etc., cannot enter religion without relaxation.

Nevertheless, take heed: if you had sworn to Titia to lead her; for in that case you might, having left that, enter religion; because a vow takes its nature from the act to which it is appended; but this tacit condition is lacking in the promise of marriage unless you enter religion. See

Bonaventurae, de quarto, quaestio prima, particeps tertia. "478. — Quære: 4. Whether a vow of not playing obliges one to abstain even from lawful and moderate play?"

Resp. si juramentum sit factum non ludendi in genere, conveniunt omnes hoc non obligare ad abstinendum à lusu honesto et moderato. See point 7, section 4, note 95. It is doubtful whether a vow made explicitly and particularly to abstain even from a lawful and moderate game obliges?

They deny, Dic. and Bassæus according to n. 94, that such a game pertains to the virtue of eutrapelia. But it must be affirmed with n. 96; because the act of a greater virtue is to abstain even from some virtuous act for greater perfection. Hence, if one has sworn to abstain from a game with an expressed greater good in mind, namely that God may be served, he is bound to fulfill it; otherwise, if he has sworn without such an intention. n. 95 and 100 at the end.

In hoc autem ludo bene potest dari materiae parvitas, quae metienda est juxta finem intentum à jurante. See note 98. Such a swearing person can also give money to another for gaming, and observe it himself, and even assist in it, because properly speaking this is not to game. Decretals, Book 3, Title 48, Chapter 5, Rule 4, Question 1, Paragraph 46, Article 5, Note 5.

Palais. tr. 46. d. 2. p. 7. n. 5. et n. 99. cum Cand. etc. 479. — Quæritur: an obliget juramentum factum contra prius juramentum? It must be distinguished whether a vow is opposed to another vow in the act of fasting; namely, if you have vowed not to make any further vows, and afterwards vow that you will observe a fast, for instance, by being given food for the fast; because according to the vow, at that time it concerns a matter that is licit, although you have sinned by vowing. On the contrary, a vow is null if it opposes a prior vow in the matter vowed, because then it would be about illicit matter: hence, if you vowed marriage to Caius (or even simply promised, as it teaches in lib. 1, d. 50, n. 2), and afterwards you vow marriage to Titia, this latter vow does not obligate, even if Caius later remits the promise, according to the rule: 'A thing that from the beginning did not exist is not confirmed by the passage of time.'

Juris in sexto. Thus Croix l. 3. p. 1. n. 323. cum . . tr. 47. c. 2. punct. 7. §. 5. n. 102 et 103. cum cum . et communi, quod si contractus posterior juratus impleatur, validus est, quamvis illicitus, quia per juramentum non invalidatur actus qui alias valide fieri poterat. Whether a vow, however, is valid against another vow?

See below regarding the vow, no. 210. v. Note. 480. — "Resp. 2. The promissory oath has the same condition and is to be explained in the same manner as the promise or proposal to which it is appended.

The reason is because the accessory follows the principal; therefore, when the promise does not obligate, neither does the appended oath obligate. . 2. c. 42. d. 2. Whereupon it is resolved: « 1. Titius, qui cum juramento promisit nuptias Bertae diviti, sanæ, virgini, bonæ famæ, etc., non tenetur stare juramento, postquam Berta incidit in paupertatem, infirmitatem, fornicationem, vel infamiam, quia promissio ipsa non obligat eo casu.

"(And this is held in c. 25. de Jurejur.)" He who has sworn for a reason of urbanity that he will not sit down before another, nor drink nor enter the house, etc., does not sin against his oath if compelled by another to sit down first, or to drink, or to enter: because that promise or intention has an implied condition attached, unless you compel me; and since this condition being removed, it does not oblige, and consequently neither does the oath: moreover, because it is relaxed by the other party yielding to his right. ». . « 3.

He who has sworn to observe decrees and rules or statutes of some congregation, university, or chapter is bound to observe those only which are in force, and as long as they are in use, or observed by the majority of the chapter; unless it be otherwise determined in the mind of the one swearing, or he himself wishes to bind himself independently thereof. The reason is clear, because a promise itself obligates in no other manner. c. Azor, tr. 6, r. 39. In every promissory oath, by fiction of law, tacitly and necessarily are subjoined the following conditions: I.

If I could do so, because no one is deemed to have bound himself to an impossible thing either physically or morally, namely, when a difficulty not foreseen has arisen. Thus Sporer c. 1. n. 77. nova. 4. 70. II.

Excepting the right of superiors, and according to the canon 49 regarding oath taken. III. If he to whom a promise is made accepts it or does not accept it, he remits it: for this is part of the nature of a promise, which follows upon an oath. : ibid.

IV. If the thing has not been notably changed. See no. 187. v.

It is not bound. V. If and the other part has kept faith: understand, if the promise has been mutual, c. 75. de R. J. in 6. 181. — It is asked how the oath of observing the statutes of some college, congregation, etc., obliges?

Attend to four rules commonly transmitted by the Doctors on this point: I.

That such a vow is understood to refer to statutes enacted, not to those that are merely contemplated. . 17. c. 2. punct. 7. §. 1. n. 77. II. Quod tale juramentum intelligatur de statutis editis, non abrogatis. That the oath be understood to obligate either under a grave or a light penalty, or merely for punishment, or merely by counsel, as does the statute. 91 n. 78, with impossibility, or on account of desuetude, or because such is their received usage, even if an oath be made concerning some particular statute. 79 n. 80, when it is said that it shall not obligate either, if some statute is not observed by the greater part of the community. 80 n. 83 § 2 num. 182 — It is asked further, how the oath binds which the physicians take in colleges according to the precept of S. Pius V. in his Motu proprio of the year 1566 Supra gregem, not to visit the sick beyond the third day, unless certified by a rescript of the confessor regarding the confession of the sick?

They say §. 3. n. 94. cum . Thus n. 92 and P. n. 94; in the Diocese of Naples a reserved case was made public by the last synod with excommunication, for previously it had no excommunication; there it is stated n. 4: Physicians who, having visited the sick in bed, did not attend to them after three days from the visitation so that the aforementioned sick might confess their sins to an appropriate confessor or otherwise not desert, according to the terms established. Saint Pius V and Innocent XI.

But, as I said, such a constitution is not in use at Naples, as several wise men have asserted to me when the infirmity is slight; but when it is perilous, the constitution and reservation are enforced. Hence Mazzoto speaking on the sacrament of penance concerning the aforementioned reserved case says: The constitution of S. Pius is tempered by custom so that it is understood to refer only to dangerous illnesses; yet the physician would be excused if he warned the sick person through another, or if he certainly believed that warning would not be beneficial. It is certainly said, for in a doubt one is bound to advise.

Thus, n. 89. cit. Sanchez, Bonacina, But in this regularly I say domestics easily to be held as suspects. See discussed more extensively on this point in lib. 6, tr. 4, de sacramentis paenitentiae, n. 664, and in praxis confessariorum, n. 53. 483. — « 4.

He who has sworn to keep a secret does not sin against his vow by revealing it when it cannot be concealed without his own or another's serious harm, because the very promise of secrecy does not seem to obligate him unless this condition is met, if it does not cause harm. Sylv. Bonacina, 54 Lib. 4.

Treatise 2. Of the second precept of the Decalogue. "(Regarding the revelation of a secret, see the aforementioned article 4, note 974, version."

This.) Oaths concerning the preservation of secrecy, which are given in assemblies regarding elections or other matters, obligate gravely or lightly according to the harm that they may cause. Thus Elbek n. 90 with Hanno, because the obligation of the vow follows the obligation of secrecy. They also say trans. 3. c. 1. n. 42.

Croix l. 3. p. 4. n. 329. etc. concerning the vow of keeping secret regarding the art of preparing some medicine. But still, despite the vow, one who holds it out of charity to reveal it, if otherwise someone were to incur a grave danger of death, since the vow is not a bond of injustice. Thus Croix with St. Thomas.

Saur. etc. " 5. He who has sworn to a judge that he will speak what he knows, is not bound to reveal hidden things. The reason is clear. Loc. cit. "6."

He who has sworn to discharge a debt within a month is not bound to discharge it within that time if the term of discharge be prolonged by the creditor: because when this yields to the law, the obligation of the promise ceases, and consequently the oath is annulled. Azor, Bon. . c. n. 48. » 184. — Whether he who promises to his concubine with a vow that he will not know another is bound by that?

He denies this because the end of such a promise was to preserve an improper friendship, namely, conserving amicitia, and because such a vow would provide occasion for remaining in peccatum. But they affirm more probingly: 47. e. 2. punct. 6. n. 70. cum . because according to the general rule a vow ought always to be fulfilled and can be fulfilled without sin: that occasion came by chance. 485. — It is queried whether a promissory vow made with a vow obliges? They affirm otherwise according to . . n. 74.

But they deny it more probabily [thus], because such a promise is at least slightly evil, and therefore the oath, although it is not a bond of iniquity, does not obligate according to the Rule of Law in 6. A promissory oath is not obligatory when it involves prostitution contrary to good morals. . n. 68. See what is said concerning the mater. l. 6. n. 854. v.

When however. 486 — It is asked whether one who has promised to return

to prison with a vow, should be bound to that promise with a probable fear of death or of an unjust and grievous harm? The first opinion denies it, because it would be an evil action to offer oneself spontaneously for death. Ita n. 48. et Vasq.

Tumb. ibid. n. 74. The second opinion is much more probable, because, given the promise, it would be an act of virtue to return. Thus Toledo l. 4. c. 22. n. 2. . 2. c. 40. n. 44. et 45. . 2. c. 42. n. 28. et . n. 75. (although the first is called probable with Bon. . . etc. Parents, or masters, who promise that their sons, or servants, will be punctual in fulfilling a vow rarely sin if they do not fulfill the vow, either because those who have sinned are already amended, or because they promised amendment; or because the vow was concerning an useless matter, or rather about an unjust retribution.

Thus chapter 44. Anacl. d. 2. n. 22. et Elbet n. 87. cum Gob. aliisque satis commu- niter. And it is added.

See what is to be said n. seq. 187. ad IV. ## DUBIUM VI. ## In which cases is one excused from fulfilling the obligation contracted in a promissory oath? 187. — « R esp. » Such cases, besides those which are gathered from the aforementioned, are also recently considered in this manner: I. If that which was good at the time of the promise becomes later illicit either through fault or impediment due to a greater good, or it is better to omit than to fulfill.

(cum caput cuarta septuagesimum septimus capitulum duo punctum sextum numquam sexaginta quinque) If you change a vow into some openly better work, and give thanks to God: for this anyone can do by himself, as Kicape always says; if you have vowed anything for man's benefit: for God does not wish to be defrauded of it. III.

If the status of the thing is notably changed, as if by word. If you had sworn to punish someone with just punishment, but he then begged for remission and performed penance, you could legitimately absolve him: because the oath bound him, maintaining the same state in which he would not have repented. "(See below infra v."

Not bound.) IV. If a thing sworn to has proved useless for the intent, especially if more destructive; so that, for example, in noting the correction of an unruly son it should be more to destroy than to amend him, or the family be disturbed, there may follow quarrels with the wife, and thus provide not to correct. King's Law, Book 18, Chapter 56.

Bon. l. c. 44. Hereupon, if the punishment which the father threatens should prove insufficient for correction, he is not bound to fulfill what he has sworn, at least not grievously. § 3. n. 63. with Soto and . . n. 62. and 63. as it is concluded in the end.) « V. If such conditions are "borne" by those, which in any promissory oath tacitly are understood according to the nature and the Doctors teach.

Such are they, namely: 1. si potero; 2. salvo jure superioris; 3. nisi res notabiliter mutetur. » What if a unforeseen circumstance should arise? 4. n. 974. v.

This.) However, oaths concerning the preservation of secrecy, which are given in congregations regarding elections or other matters, obligate gravely or lightly according to the harm that they can cause. Thus 90. when it comes to Hanno, because the obligation of a vow follows that of secrecy. They say the same. Third book, chapter one, note forty-two.

Croix l. 3. p. 4. n. 329. etc. concerning the vow of keeping secret regarding the art of prescribing some medicine. But even still, despite the vow, you are bound by charity to reveal it, if someone otherwise would suffer a grave danger of death; for the vow is not an unjust bond. Thus Croix with St. Thomas • 5.

He who has sworn to a judge that he will speak out about what he knows is not bound to reveal the "occulta." The reason is clear. Loc. cit. "6." He who has sworn to discharge a debt within a month is not bound to discharge it within that time if the term of discharge be prolonged by the creditor: because when this yields to the law, the obligation of the promise ceases, and consequently the oath is annulled.

Azor, Bon. . c. n. 18. » to be held bound to that if one does not know another? He denies this because the end of such a promise was vain, namely to preserve friendship, and because such an oath would provide occasion for remaining in sin.

But they affirm more probabily: chapter 47, paragraph 2, point 6, note 70, namely, because a vow ought always to be fulfilled according to the general rule and can always be fulfilled without sin; but that occasion came by chance. Chapter 485. — It is asked: whether a lavish promise bound by a vow obliges? Others affirm it, n. 74. But they more probably deny that there is a right in it for 6.

It is not obligatory to violate our own morals through a sworn oath. . n. 68. See what is said concerning marriage, book 6, number 854, v. Now however. 486. — It is asked whether one who has promised to return to prison with a vow, is bound by that promise with a probable fear of death or of an unjust and grievous harm?

The first opinion denies it, because it would be an evil action to offer oneself spontaneously for death. Thus n. 48. and Vasq. n. 74. The second sentiment is much more probable in affirming this, because, upon the setting forth of the promise, it would be an act of virtue to return.

Thus Tolet. l. 4, c. 22, n. 2; and c. 40, n. 14 et 45; and c. 42, n. 28 et n. 75 (although the first may be called probable by Bon., Toled., etc., who swear that they will punish their sons or servants if they do not fulfill the oath, rarely do they sin, either because those who have sinned are already amended, or because they have promised amendment; or because the oath was concerning an useless matter, or rather about an unjust punishment). Thus chapter 44. Anacl. d. 2. n. 22. et . 87. cum Gob. aliisque satis commu- niter.

And it is added. See what is to be said, seq. 487. ad IV. ## DUBIUM VI. In which cases is one excused from fulfilling the obligation contracted by means of a promissory oath? 187.

Does the change of circumstances excuse an obligation? Does cessation of the cause finished excuse? 187. — « Resp. Such cases, besides what is gathered from the aforementioned, are newly considered in this way: I.

If that which was good at the time of the vow later becomes illicit on account of circumstances, or void, or impeditive of a greater good, it is better to omit it than to fulfill it. (cum caput quartum decimum septimum capituli duodecimi punctum sextum numerus sexaginta quinque « II. If you change a vow into some work openly better and for God's grace: this anyone can do by himself, as Excipe always says, if in any way you have vowed something for man's benefit; for God does not wish to be defrauded of this.

III. If the status of the thing is notably changed, as by verbiage, you had sworn to punish someone with just punishment, but he then besought remission and performed penance, you could condone him without perjury: because the oath bound him to be held in the same state in which he would not repent. "(See more below v."

It is not bound.) « IV. If a thing sworn to has proved useless for the intent, especially if more destructive; as, for example, if it were noted that an impenitent son is to be rather destroyed than corrected, and thereby the family is disturbed, there ensue disputes with the wife, and thus fail to provide not correcting. Regin. l. 18. c. 56.

Herefore, si the punishment, which the father menaces, doth not suffice for correction, he is not bound to perform what he hath vowed, at least not gravely. § 3. n. 63. cum Soto et . . n. 62. et 63. cum in fine.) V. If such conditions are observed, which nature and the Doctors teach to be tacitly understood in any promissory oath. Such are they, namely: 1. si potero; 2. salvo jure superioris; 3. nisi res notabiliter mutetur.

What if an unforeseen circumstance should arise? 56 Lib. 4. Treatise 2. Concerning the second precept of the Decalogue.

See dieta n. 480. v. In every case.) "4. unless the obligation is removed." Regarding the aforementioned doubt.

One is not bound to fulfill a vow when 'supervenient' notable change occurs, for instance, through danger of death, infamy, or some other serious harm, because it is not considered that one wished to be bound in such a case, since then the matter would be different from what was promised; but in doubt whether the change is notable, one is bound. Palau 15. d. 4. p. 20. n. 4. 4. c. 2. n. 34. et c. 3. punct. 2. n. 20. cum sed dubium est, num sit de se sufficiens illa mutatio etiam non notabilis, qua tamen praevisà, ille juramentum non emissest? The first opinion affirms according to St. Thomas in the Fourth Question of the Fortieth Distinction, Article 1, ad 1, who teaches thus: To release one from the obligation of a vow or a promise, which if known from the beginning would have prevented that action.

Reason, because the intention to be bound then either is lacking or is thus interpreted. Ita n. 7. Sylvest. v.

Vow, 2nd question, 17th article, in conclusion. Molina to. 2. de just. d. 272. coll. 2. et 7. item S. Anton. c. 3. n. 21. The second opinion holds that it is insufficient because an obligation cannot be inferred from a promise which would not be made in the future; but rather from one which has already been made.

Thus it is said in 4th book, chapter 9, note 8; and in 4th book, chapter 2, note 22; and in 15th question, article 4, page 20, note 3, and note 22, etc.

Nevertheless, they justly say that the probability of the first opinion cannot be denied. But themselves, Salmanticensium ibid., chapter 4, paragraph 6, section 3, note 152, hold that it would be a notable change if, had it been known from the beginning, he who swore would not have promised; which indeed agrees with the first opinion. See regarding the vow n. 226. 488. — Moreover, they add that the obligation of a vow or a promise ceases if the final cause thereof ceases; for example: you promised an alms to a poor man, but he afterwards became rich; you promised not to enter such a house because of some danger, but that danger ceased; you promised a pilgrimage for the health of your father, but he died, and similar cases.

Thus 42. 2. de voto c. 18. n. 3. Bonaventurae doctoris quarto decimi quaestionis secundi partis tertii sectionis duae numeri quadraginta uniuscuiusque decimi novem partis viginti numeralis unius cum Prado numero unus et punctum tres numeralis sedecim. DOUBT VII.

How is the obligation of an oath removed by irritation, dispensation, commutation, and remission? Who can irritate oaths? And who can dispense? Whether one can dispense in vows and also in oaths? Concerning the commutation and relaxation of an oath? What if an oath has been made in favor of a third party? Can it be remitted by that very third party? Appendix concerning adjurations, and especially concerning the adjuration of demons. 489. — « Resp.

Concerning this, given the aforementioned conditions, and the power of superiors over their own vows and those of others, these things are commonly thus transmitted: 4. Concerning the matter of adjuration, it can be irritated and annulled by any superior, husband, or master who has the power to irritate the vows of his own, according to n. 7. Fillius l. 25. c. 9. p. 47. dub. 6.

See the following head from n. 227. 2. They can also irritate oaths and promises made in the grace of a man whenever to them is conceded the right to invalidate such a promise or contract. Regarding the dispensation, whoever has the power of ordination either directly or by delegation; or a privilege of dispensing in vows, can dispense in those matters even if oaths have been sworn. 490. — Here it is asked whether one who has the delegated power to dispense in vows can also dispense in oaths?

The first opinion is probable in denying it, because a vow and a promise are different; and hence the faculty concerning promises is specially conceded by the style of the court. Thus. 2. c. 42. n. 60. and . Azor, ac de juram. c. 3. punct. 4. n. 3. " Verum secunda sententia non minus probabilis affirmat, quia juramenta præstita Deo solo, licet sint diversa à vinculis

votorum, tamen in ordine ad dispensationem uti sunt reputata, argumento loquentis.

That is to say, concerning a corrupted servant, where it is established that an arrangement in one equiparate is considered equivalent to an arrangement in another. That particular concession concerning oaths is made in the style of the curia for greater caution. Thus n. 3. with Caj.

Pont: . Arag. etc. Sed hoc non obstante, prima sententia negativa omnino est tenenda, nam obligatio juramenti jam contracta, cum sit certa et possideat, auferri non valet per dispensationem tantum probabiliter validam. Otherwise it seems that one should speak concerning oaths kept for the sake of the common good; rather, such oaths in themselves are null. See the aforementioned points 477 and 491. – “4.”

As regards commutation, the same reasoning applies as concerning dispensation. As regards remission or relaxation, a vow made in favor of a human being cannot be relaxed unless by him who made it, or by his heir to whom it is subject and the matter promised pertains. As regards commutation, the same reasoning applies as to dispensation.

And this very thing can be remitted, even though such a favor was promised to him on account of God, for example, if someone had promised to marry her out of charity for God’s sake, that same promise can be relaxed, as Navarrus and others against Soto and Suillogues hold, because although the promise was primarily made on account of God, yet its execution is in favor of a human being, and depends also on the will of the human. An etiam civilis potestas relaxare possit juramenta suorum subjectorum in temporalibus, quando justa causa subest, v.g., quia metu vel alia injuria extorta sunt, controvertitur. Others deny, while others affirm: "According to the aforementioned law, chapter 3, section 42."

"cum Suares non posse relaxare directè, sicut potestas ecclesiastica quando dispensat, sed tantùm indirectè, v. gr. ratione materiae, vel supplendo vicem ejus cui juratum est et qui remittere debeat." Many matters pertaining to the external forum concerning oaths are to be found apud Bon. l. c. 492. — For greater clarity it should be said thus: that if a promise in favor of a human being, confirmed by an oath, has not yet been accepted, there is no obligation to fulfill it or revoke it; because the oath then is accessory and follows the nature of the promise; but otherwise, if the promise was principally made de jure. c. 2. punct. 5. §. 2. n. 56. cum . 4. §. 4. n. 70. II. Quod si talis promissio est acceptata a tertio cui facta fuit, tunc sine ejus consensu nec etiam a Pontifice relaxari possit.

It is still common according to . c. 41. n. 25. with S. Th. 2. 2. q. 89. art. 9. ad 3. 3. e. 7. §. 3. n. 3. n. 68. Cross L. 3. P. 4. N. 358. And this, even though the vow is principally made in honor of God, as Croix says ibid., cum . . 3. de voto n. 255.

The word "dictio" is limited broadly in three cases: I. If the one who swears is a subject, and the oath concerns matters that are subject to superior authority, as teaches S. Th. ibid., therefore the Pontiff can invalidate all oaths concerning ecclesiastical benefits, offices, etc. Parents can also invalidate oaths of minors regarding their own property; guardians of wards; superiors of religious; husbands regarding dowry goods: masters of servants. See all at [the reference] c. 3, punct. 4, ex n. 4 and 5, with Lim.

II. If an oath could not be kept without harm to the common good, as it would be an oath not to reveal, not to accuse, etc., or over a contract forbidden by law, for example, one of paying a penalty if someone remains away from betrothal; which is prohibited in chapter Gemma of "De desponsat impuberum." (And also concerning the prohibition of paying lost gaming debts, as they say in case of contentious doubt 48). Such oaths more truly do not require relaxation that are not necessary by themselves according to the aforementioned n. 477 and v. ibid. n. 6 with . et Guttier. By the name of the Church come not only the Pontiff, but also the Bishops, chapters with vacant seats, and others having episcopal jurisdiction, as stated in n. 7 and n. 8, and even confessors having delegated power to dispense in vows, who can also relax such oaths, as stated in n. 9 with . and Guttier.

Lim. III. If a vow is obtained through deceit or extorted by fear; then even from those same parties, as was stated above regarding the penalty of extorters, it can be released, as is certain among all; and even if the vow is extorted from a third party, knowingly by the principal. n. 7. cum . . Arag.

Nay, this is the point: even though the promise is not undue, for instance, in regard to the payment of a debt; yet if the oath be unjustly extorted, it can still be freely remitted for the internal forum, as stated in n. 8 with Sanoh 193. — It is certain that an oath made in favor of a third party can be freely released by him without relaxation on the part of the Church, as all teach according to 2 q. 89 art. 9 ad 2. But the question arises: whether a vow made in favor of a third party ceases by reason of that person's remission, even if the principal promise be made to God? St. Thomas denies this ibid., except under a certain condition, namely, if it will appear so to him to whom the promise is made; and the same is held generally by . n. 16. with Stot.

Syl. etc. Et conversely with Nao. et Croix l. 3. p. 1. n. 358. cum Gob. Tamh. probabiliter tenent, cessare obligationem. Reason, because although the promise was made to God, it has nevertheless always been held dependent upon the will of man, whose law it is, namely, that if he does not remit the execution.

And this too they follow: n. 14. cum . . etc., always and although a vow principally is made for the honor of God, yet the entire promise yields in favor of the party; for example, if anyone, with an intent of piety, vows to give this church a chalice, this paper alms, or to enter into this religion. An autem juramentum vel votum perseverantia, quod emitti solet in aliquibus congregationibus, possit relaxari vel dispensari ab Episcopis sine congregationis consensu? See what is said below, no. 255. In the Appendix on adjuration.

I. An adjuration is an invocation of God, or of sacred things, or of Saints, to induce someone to perform or omit something. Thus S: Th. 2. 2. q. 90. art. 1.

Another is solemn, which is performed by ministers and according to modes established by the Church; another is private, without such solemnities. Moreover, another is deprecatory, as was that of the prince of priests: I adjure you by the living God, that you tell us whether you are Christ, etc., y. 63. Another is imperative, which pertains solely to superiors towards inferiors, and to exorcists towards demons.

II. That an adjuration be licit, three things are required, just as in a vow, namely: Truth, id est, ut adjurans vere intendat assequi quod petit et vera sit causa ob quam petit; carentia autem hujus veritatis raro erit plusquam venialis, nempe si fictus pauper per Deum petat eleemosynam, ut dicunt 2. c. 42. n. 5.

Sporer de 2. praec. c. 1. n. 163. . 6. n. 153. II. Justice, de whose lack certainly would sin grievously in petitioning a grievous evil, from common decree.

What if he seeks a slightly wicked thing? They hold that it is a venial sin. 22. from 2. part. Sporer n. 165, et dicit esse mortale, quia satis gravis videtur irreverentia inducere alium ad rem malam opera divinae authoritatis.

See what is said in note 146, verse 5. Venially. III.

Judgment, that is to say, due discretion, whose lack certainly is not anything other than venial. III. Only intellectual creatures can be directly adjured, namely, men and demons.

Indirectly however even irrational creatures, such as salt, clouds, locusts, etc., can be adjured by invoking either God, that their use may assist us; or demons, that through them they may desist from harming, as it is taught. St. Thomas, II-II, q. 90, art. 3, with others commonly. IV.

Privately to all it is permitted to adjure; but solemnly—only to ministers constituted for that by the Church, and with the express license of the Bishops. Thus commonly. n. 5. with others, from v. 19. Ecce dedi vobis potestatem calcandi supra serpentes et scorpios, et super omnem virtutem inimici.

And from verse seventeen. In my name demons shall be cast out. V.

Especially concerning the adjuration of demons, two things are especially noteworthy here: I. That the adjuration with them may be imperative, and not truly supplicatory. II.

That it may be done solely for the removal of damages and distress suffered, and not for vain glory or curiosity; hence the Doctors commonly with the Salamanquists say ibid. punct. 6. §. 4. num. 55: I cannot excuse a grave sin which would contain many useless sermons when the demon is present. But it is asked: Whether it is a mortal sin to inquire about one thing or another that is curious with regard to the demon? Palaus affirms that then the exorcist seems rather to pray deprecatorily than imperatively.

But it is more probable that it is merely venial, if a serious adjuration be made in an imperative manner. Ita Sanchez, Dec. l. 2. c. 42. n. 25. item Cajet. n. 55. et 56. Chapter 2.

Of the oath. Doubt 7. It is asked 2. concerning which matters it is permissible for an exorcist to question a demon?

It is permitted to question about all things that lead to his expulsion. n. 54. with St. Thomas and the common opinion. Hence they can inquire about the number and names of those who dwell in the possessed person, and for how long a time, as is found in the Roman Ritual. Item causem sui ingressus.

Likewise the sign of his exit, as commonly permitted against Soto, n. 54. with n. 156., because (as he says) they do not seem to have any other power than that of questioning concerning those things which contribute to expelling him. But it is more probable and commonly affirmed that this is permitted if it leads to divine glory. Thus and so according to n. 59, and expressly this is taught by D. Thom. 2. 2. q. 95. art. 4. ad 4. where he says: But it is another thing to inquire about something spontaneously presented by a demon; which sometimes may be permitted on account of the utility of others, especially when divine virtue can compel him to speak truly.

And another thing is to invoke a demon for the acquisition of knowledge of the occult from itself; which certainly is evil. What if the demon assigned as a reason for its entry and assault that the one baptized was invalidly baptized; would this person then need to be rebaptized under certain conditions? From one aspect it seems that this should be denied, because no faith is due to a demon.

From another aspect it seems that it should be affirmed, because a demon is bound by the power of exorcism to facilitate the truth. In hac difficultate rationabiliter opinantur hunc non esse rebaptizandum, nisi aliunde adsint valide conjecturæ non accepti baptismi, nempe si baptizans fuerit maleficus, vel haereticus, vel muliercula parum instructa, vel acer enemius parentum baptizandi, qui dixerit se velle ulcisci, et similia. The exorcist, however, that the possessed may be truly liberated, should diligently take care to observe the sequelae: 4.

First well explore, whether he is really possessed by a demon. 2. Let him fortify himself with faith, confidence, and charity; besides, let him do so with prayer, fasting, and great humility, otherwise it will profit but little. They nevertheless say that his exorcism possesses its power even if it is performed by one who is in sin.

It leads the one possessed to confession, confidence, and prayer. Let him use exorcisms in the Roman Church, or at least in his own diocese approved. Let there also be recourse to invocation of the names of Jesus, Mary, and likewise to the sign of the cross, and relics of saints; or blessed water, the Lamb of God, etc. 5.

Let there be a caution lest it jest with a demon, but rather let it utter few words, and do not permit it to speak more, but command it to be silent. Beware also, as the Ritual advises, lest through the words of the demon he resort to sorcerers, that they may dissolve malefices. Let him command the

demon to speak whether it is there on account of maleficium; and that it may render or reveal the signs of maleficio.

Let him regularly perform the exorcism in the Church with the doors open, unless there be a just cause why it should be done at home (as is said in the Rite). Exclude women, boys, and idle men whose slight faith might hinder the exclusion. Let him repeat the threat many times, and the words by which he grieves the demon more, always increasing the penalty.

Finally, let him warn that there are no infallible signs of an egress; yet probable signs are present if one has been long oppressed by a disturbance free from harm; likewise the confession of demons, a great vomiting of putrid things, or a very foul breath: also loud cries which may be heard there; furthermore, if the one oppressed remains on the ground cast down and almost dead, and similar [phenomena]. It is not permissible to concede to the demon that it may invade another human body or beast's body, so as to exit from the energumen, as he promises, as he thinks. 167. with Bonac. . etc.. Generally, however, they say. DD. exorcisms have the infallible power of expelling demons as of their very work.

Thus Sporer from 2nd precept n. 467, n. 16, n. 19, . 460. and . p. 3, n. 47, and 22 with etc. It does not hinder that several exorcisms may not have effect; for as they say. See elsewhere with Delrio, who treats of this matter. CAPUT III. DE VOTO. DUBIUM I. What is a vow? How manyfold is a vow? 194. — R ESP. 1. It is a promise made to God, deliberate, concerning possible and better good.

St. Thomas Aquinas, II-II, qu. 88. See. L. 4. T. 4. Whereby it appears that a vow is an act due solely to God as latria.

Wherefore, when we vow certain things to Saints, the sense is that we vow them to God for His honor; just as we build temples and altars to God for their honor. Moreover, from each part of the given definition many cases are resolved, which I will separate and propose individually to avoid confusion and for the sake of memory: Resp. 2. The vow is divided, I. absolutely, and conditional.

That which is done without any condition: as when I vow alms-giving; but that which is done with a condition, such that unless this condition be fulfilled, the obligation does not arise; as when I vow alms-giving, provided that health be restored. ## Cap. 3. On the vow. Dub. 2. • vel (quod dicitur poenale) voveo facere disciplinam, si hoc fecero. • II.

In solemne, et simpleax. This is what is accepted as such by the Church, and these are the two: the vow of chastity, which is annexed to the greater orders, and the vow of religious profession. A simplex autem votum est omne aliud, quod talem solemnitatem non habet.

Where it should be known that solemn vow renders a person legally incapacitated to enter into contracts or acts contrary to the vow, such as marriage or the possession of goods. See below i. 5. c. 4. in treatise on the state of religion. But a simple vow, such as that of chastity (excepting what is emitted in the Society of Jesus after novitiate), even though it renders a contract illicit, such as that of marriage, not such a one invalid.

See below in book 6 concerning marriage. III. In reality, and in person.

That is when money or some other external thing is promised as a valuable recompense, such as a chalice, almsgiving: but this, together with some act or cessation from an act, like a vow of fasting, pilgrimage, abstinence, pleasure. Some add a mixture from both sides, so that if you vow a pilgrimage with the offering of some external thing. See Lessius i. 2. cap. 40.

DUBIUM II. ## What is required for the deliberation and intention of a vow? 196 What deliberation is requisite to a vow? 197 Is a vow issued out of fear binding? 198 Is a vow issued out of error binding? 199 Does a simple purpose suffice without obligation? 200 Does an implicit promise suffice for a vow? 201 What purpose of the will is required for a vow? Here many things are sought, and I. Is one bound to a vow who positively refused to promise and to oblige himself?

II. Who did not have the intention of fulfilling? III.

Who negatively did not wish to oblige himself knowing the obligation of the vow? What. I. Qui negativè noluit se obligare sciens obligationem voti?

What, if one who is ignorant? What. II.

What if someone should wish to send [something], and positively refuse to bind himself? What. III.

What if someone doubts whether he willingly bound himself? Whether or not he knows the obligation of the vow? What if one doubts whether he has made a resolution or a vow? 496. — “R esp.

Since the obligation of a vow is very grave, it requires intention, deliberation, and perfect freedom, whereby one freely and directly would have willed to promise himself, with the mind of being bound. Thus do the doctors commonly say. IV. q. ii. p. i. ## Whereupon the resolution: 1. The acts and use of reason in making a vow suffice for a perfect mortal sin committed by a human act and willed directly in oneself. Nevertheless, take into account solemn vows of religion, which are invalid before a certain age. 2.

A vow made with partial animadvertio, or release: e.g., from a sudden movement of the mind, or habit, anticipating the intention of the mind, or from the heat of anger, depriving the use of reason, does not oblige. Azor, l. 2, c. 2, d. 4, ubi non est sufficiens indicium, quod defuerit perfecta ratio vel deliberatio si voventem facto voto mox peneiteat: item motus irae raro et vix umquam impedire usum rationis. Here it is to be seen whether there are any other circumstances added.

See 47th chapter, 4th paragraph, point 4, section 4, note 11. But a sin, at least in the springtime, is committed when one, with a light consideration, rejects vows of great weight; although thereby one is obligated to those things, ibid. n. 14.) » 3. That is to say, if he who knows himself to have made a vow doubts whether it is not bound by sufficient use of reason and the faculty of discretion on account of age deficiency, if indeed he made it before his seventh year, the vow does not bind unless it be established that there was sufficient use of reason; because such right is not presumed in such a case, and possession stands for liberty.

If however he vow after seven years, it obligates; because possession is for a vow, unless it be supposed that the use of reason does not exist, in which case the vow would not obligate. If finally he doubts whether he made a vow before or after seven years, he wishes to be bound by the vow. In any case of doubt, however, whether full deliberation was lacking, the vow is valid, n. 147. ibid., with Bon. et; because then the vow does not yet possess; ibid., and 4. Vows made inebriety, even before foresight and thus willed in the cause, are not valid, since they are not willed in themselves and directly; but a good does not arise unless from an integral cause, although it is sufficient for sin that the will be voluntary indirectly and in the cause. . 4. t. 4. c. 1, n. 4. 497. — « 5.

Vows made in fear and not to incur this very thing, that a vow might be extorted, are valid, because they are simply voluntary and deliberate. » (Just as vows made out of intrinsic fear or justly incurred are valid, so too are vows made out of fear. . 47. c. 4. punct. 6. §. 5. n. 164. ex c. 4. et 2. de adult.) Vows made out of fear unjustly incurred for the sake of extorting

that very vow are invalid by common law, not because they are not voluntary, but because either justice is offended thereby, or God does not accept them so as not to give sanction to an act of unjust coercion; this holds whether the fear be great or small; provided always that someone formally makes a vow out of such fear. . 4. c. 8. c. 4. « » But this question arises: whether a vow emitted out of grave fear, unjustly incurred, is invalid at least according to ecclesiastical law?

The first opinion denies this, as stated in book 6, chapter 14, note 6, and in the treatise on vows, chapter 8, note 5. Sylv. v. Fear 8. conclusion and v.

Vow 2. q. 12. Pontus lib. 7. c. 19. n. 9. tract. 45. d. 1. p. 5. n. 13. et probabi- liter . apud . c. 1. n. 163. Excepting nevertheless the vow solemnly issued in religious profession, which certainly is null, according to c. Perlatum, de iis qua vi, etc. " The Second probably affirms this, as Busemb. et 4. c. 3. n. 11. 2. cap. 40. dub. 3. n. 18.

Azor p. 1. lib. 11. cap. 16. Question 6. n. 52. ac cum Ubi dicitur: Debre carere robore firmitatis, qua metu fiunt. From chapter "Cum locus de spons." where it says: Where there is no consent, where fear or constraint intervenes. However, it is excused if a just fear has been incurred, from chapter 1 and 2 on adultery.

See note 164. Whether, however, a vow issued from a slight and unjust fear is invalid? He affirms this, Bussemberg says, namely that...

Moreover, Decretals, book 4, chapter 3, note 24. The reason (as they say) is because fear offends a vow insofar as it removes full consent liberty: therefore even slight fear will offend when it removes the same liberty, and this is why a vow is formed. And this opinion is called probable. Ibid. n. 164, which they call common and prove from c. Perlatum, de iis qua vi, etc. Ratio, because a light fear, which can easily be rejected, is not considered a cause of so grave a thing as a vow; thus we shall also say concerning contracts, n. 718. 198. — « 6.

Regarding vows issued through error, if the error was concerning the substantial matter of the promised thing, or concerning its substantial condition, or concerning the end, or the formal reason and motive for vowing, no vow is valid (cf. Caus. 47, cap. 1, punct. 6, § 4, n. 155). For instance, see 1. Regarding the substance, if anyone should vow a certain cup of his own as being silver, when it is gold: or himself to enter a certain monastery, thinking it to be of the order of Saint Benedict, when it is of the Cassianists. Regarding the substantial condition: for example, if

someone should vow a certain one of his cups, thinking it to be made of silver when it is gold; or himself to enter a certain monastery, thinking it to be of the order of Saint Benedict when it is of the Cartnsian order.

» If one should vow to enter a monastery where he would think religious novices were being diligently educated and the essentials of religion accurately preserved, yet it was not so; or if one should vow a pilgrimage to the thresholds of the apostles, thinking they were only a hundred miles distant, when in fact they were three hundred. » 3. Regarding the final cause: if anyone, for instance, should vow something in gratitude for the recovery of a parent who was not actually ill, or who is dead.

And the reason for the nullity of such vows will be this: because here there is a lack of free consent, which does not fall into obscurity, and nothing is more contrary to consent than error. It is certain that an error concerning the substance invalidates a vow, even if it be concomitant, that is, not giving the cause of the vow: for instance, if you had vowed still, through knowingly being in error, that you would do something. Thus . lib. 7. d. 18. n. 6. et Dec. l. 3. c. 14. n. 43.

And even if such an error were as gross as it could be: concerning the matter [of the vow], it invalidates the vow, even though it is concomitant, that is, not giving cause for the vow: for example, if still, with the error known to you, you had vowed. And it is also certain that invalidates a vow an error concerning substantial circumstances, namely, those which pertain to the substance of the thing promised, according to examples set forth by Busemb. here. But otherwise, if the error, although it has given a cause for the vow, is regarding conditions that do not affect the substance of the thing promised, for example, if someone vows to give alms to a person thought to be good, he is bound to give them, even if later he learns they are an enemy or an opponent; although, having learned these things beforehand, he would not have vowed.

Thus, point 6. section 4. number 466. Otherwise, as they say, how many contracts, how many marriages, how many professions, how many ordinations would have to be broken, if there were allowed an opportunity for them to be annulled on account of accidental circumstances, beyond those that are foreseen? They agree with C. 2, n. 14, which Busembao adheres to above, n. 475, where he says probably with regard to contracts, c. 4, punct. 3, n. 24.

Therefore, even regarding vows, it also seems probable. See to be said n. 226. • 7. Vows, which are emitted after novitiate in any approved order, like a carnal marriage, are not invalidated by any error, except only

substantial regarding substance.

Si error circa conditionem substantialem sit de re parvi mo-menti, non redditur votum irritum: ut si iter peregrinationis, quam quis vovit, sit paulo longius, quam putabatur, quia parum reputatur pro nihilo. Item si error sit tantum circa causam impulsivam, valet votum (cap. 47, punct. 6, sectio 4, num. 458.) quia illa est tantum causa secundaria, qua seposita, actus est sufficienter voluntarius secundum substantiam. Neither such an error vitates the act of a contract in all cases: for example, one vowed a pilgrimage to Rome with the intention of studying God there, and at the same time had a secondary causal impulse, so as to visit a brother whom he thought to be in Rome; even though he later understands this brother not to be here, nevertheless the vow does not cease to bind him.

And from these things it is evident how that which is commonly said, vota non obligare ultra intentionem voventis, is to be understood. . 4. c. 2. n. 45. dub. 2. n. 44. 499. — « 9. A mere purpose for a vow is insufficient, even if it be most firm: because he who merely proposes does not stand bound under sin to fulfill; but he who promises is obligated under sin, and unless he fulfills, he acts contrary to the faith given by God. "An negligentium bonus propositus, peccet saltem venaliter?"

They affirm in opposition to I. Punct. 4, §2, n. 47, on account of the inconstancy intervening without cause then. They nevertheless deny it, Busemb. 3. cap. 2. n. 21. with Sot. Arag.

Azor et n. 18. cum Dic. 200. — « 40. Sometimes a hidden implicit promise suffices for a vow, as is evident in the reception of sacred orders, where although it is not explicitly stated that I vow or promise chastity, this vow nevertheless becomes implicitly formed by this very fact, whereby knowing that the Church has antecedently received this vow from them, you receive them. Et verum, si quis hoc plane ignoratione habuerit, tamen adhuc putaretur votum ex implicita intentione dare dubium est.

Some say, others deny this more probingly, asserting that such a person is bound to chastity not by vow but by the Church's precept. . l. c. d. 87. n. 23. » p. 4. and common. » (But he thinks.

But see what is to be said about this in the book on sacred ordination, volume 6, according to note 806. — « 44. If anyone should have an intention of promising something, but yet consider himself not bound thereby, there would be no vow, according to . Chapter 2, Question 40, Doubt 4, Note 6.

Bonaventura et alii contra Cajetanum, quia talis non vult vovere, cum apponat conditionem contra substantiam actus. Whereupon Lugo, on day 24 of justice, sectio 4, and others maintain that such a thing cannot be called a promise. True seems to be a question concerning the name.

If however he had the intention of vowing and binding himself, not indeed of fulfilling, then also he would gravely sin, and the vow would be valid. Here more distinctions ought to be made, and the first. If anyone vows with a positive intention not to promise, nor to bind himself, certainly such a vow is null, as treated in 47. c. 4. punct. 4. §. 3. n. 49. with St. Thomas and the common opinion.

II. If the vow-taker has an intention to promise and obligate himself, but with the intent of not fulfilling it, it must be held that he is bound by the vow, according to common opinion, as taught in . 2. c. 40. dub. 4. n. 7. 4. c. 4. n. 23. and . n. 21. against Valentine. Reason, because the obligation of a vow does not depend on the intention to fulfill it, but on the will to bind oneself, which is already present.

III. If the vow-taker has an intention both to promise and to fulfill, but without a positive intention of obligating himself, then, if he sufficiently knows the obligation of the vow but does not advert to it when he emits the vow, and negatively holds himself by not willing nor excluding that obligation, he is nevertheless bound by the vow, because who wills the antecedent act (at least implicitly) values its consequent obligation. Thus commonly. Book 4.

D. 9. n. 41. Palaces T. 3. Tr. 15. D. 4. Part. 3. N. 2. Tamburin. l. 3. c. 42. §. 4. n. 6. et alii passim.

But seek. I. He is bound by his vow who does not know the obligation of the vow and negatively disposes himself, neither explicitly nor implicitly intending to undertake it.

They affirm, canon 2 and note 9, that here he is to be considered as having intended to promise according to the mode and intention which others make who promise properly. But they more truly deny: according to lib. 4, dist. 9, n. 2; and according to p. 4, n. 368, c. n. 8: those who assert that this is almost universally condemned. Reason, because no one contracts an obligation unless he wishes to impose it upon himself; but this one in no way wishes to accept such an obligation, neither formally within himself nor virtually within the promise, since he errs in substance by judging that

such an obligation is not annexed to a vow.

Otherwise, however, it must be said as they rightly observe: if anyone should have wished to vow merely in a common manner, as others do, because then he implicitly wished to contract an obligation. Question. II.

Is one bound to a vow who wishes to promise and knows the obligation of the vow, but does not wish to bind himself to the vow? The first opinion, which 7 questions, 1 article, 2 holds, and Prad. treatise 17, chapter 1, point 1, section 3, note 24 states, that he is obligated because, given the will to emit the vow, the obligation arising from the vow cannot be separated from him. The second opinion, however, more common and more probable denies this, and those who hold it say: 4. c. 4. n. 27., 2. c. 40. dub. 1. n. 6., 3. tract. 45. d. 4. p. 3. n. 2. et . n. 25. cum ; tum because the law (inasmuch as it is a particular law) does not oblige, except according to the will of the legislator.

Hence they infer. But see what is to be said about this according to order, lib. 6, dub. 2, n. 809. What kind of sin it is to vow thus without any intention of being bound?

They say and n. 27 with Reginald and . It is said to be ordinary, because in religious profession and reception of sacred orders, profligacy would be mortal, because it would be a great deception. See what is said regarding law no. 172. v.

II. If however. Seek.

III. Is one bound by a vow who doubts whether he intended to obligate himself by making the vow? But it must be said otherwise according to Croix l. 3, p. 8, n. 314 commonly; because, until the invalidity of the act is established, there is presumption for its value: as commonly they teach. The same must be said, as rightly states Croix, n. 386, against Gobat: if anyone doubts whether he knew or perceived the obligation of a vow, because from things commonly understood everyone is deemed to know and perceive it, whatever vow produces this obligation to fulfill it.

What if one doubts whether he has made a vow or a promise, but remembers having believed himself to be gravely sinning if he did not fulfill the promise? Croix n. 266 considers this not to be obligated, because at least it is a doubtful vow, since many unrefined individuals, making such a bare proposal still in error, consider themselves bound by sin with regard to that. But this consensus does not agree; and I think that one truly

is deemed to have made a vow and contracted an obligation thereof; for since he has already grasped that he would sin by not fulfilling the promise, right reasoning indicates that he truly acknowledged it and imposed it upon himself... ## DUBIUM III. ### What is required for the matter of a vow? 202 Does a vow bind to an impossible thing? 203 Does a vow bind one to see all venial sins?

What if someone should vow beyond mortal and essential things collected together? Does a vow bind to any matter at all? Is it mortal to vow a venial evil? Is a vow made from an evil end valid? Does a prohibitory vow hinder a greater good? Is an act of non-potendi dispensable? Is there a vow concerning marriage? Is there a vow not to marry? 202. — Resp. This must be possible (for it is impossible neither to intend the impossible nor to be obligated towards that): and not merely good things, but also better things than their opposites, or their omission: for the intrinsic end of a vow is to honor God through this means; yet this cannot happen unless something pleasing is offered to Him: now it cannot be pleasing in such a way as to obligate one to abandon what is better. It is replied, that he is bound to the possible part, if it is divisible; for instance, if the spouse vows chastity, he is bound to abstain from seeking.

Tantum valit etiam votum, si possibilis est principale illius, licet impossibile sit accessorium. Thus, if it has been converted. See. 47. cap. 4. punct. 2. §. 5. num. 75.

What, if the vow be disjunctive? See next number and verse. At the same time. Hence I resolve: 203. — « 4.

It is invalid to vow never to commit a venial sin morally and orderly, since it is impossible in practice. However, if they wish thus to hold themselves bound by this vow to avoid mortal sins and more grievous venial sins, about which the Scholastics [discuss] n. 63, c. 2, l. 9, d. 35. The vow of St. Theresa, understood as including whatever she would have considered to be done, corresponds to that having been issued from a special inspiration of the Holy Spirit.

See n. 84 and 85. But more truly does Croix say in book 3, page 1, note 404: when in other matters it will be impossible to find material for a slight virtue; nay, in some materials, such as unholy thoughts, idle ones, etc., since they are inevitable so far as all are concerned, the vow is null. Thus n. 84, as Cajetan says, etc. Similarly, there is no vow concerning the avoidance of mortal and venial sins collectively.

And likewise a vow to avoid mortal sins or venial ones separately: because there is no such disjunctive vow, part of which is fitting and part unfitting, and the one who makes it does not intend to bind himself to either specifically: for instance, if you vow that you will either pray or play, your whole vow is null. . n. 83. and punct. 6. §. 1. n. 141. with . . Likewise also §. 1. n. 3. and Croix loc. cit. n. 402. Whoever, however, rightly observes that, if one has bound oneself to such a vow, as far as possible he is certainly held to avoid at least mortal sins. And I also hold him to be bound by such a vow for the avoidance of venial sins, according to what we said above, § 204. — « 2.

It is invalid to make a vow regarding a vain thing, or an useless one, or one that is indifferent, unless circumstances or purpose render it good: (Modo circumsistantia non ex sola relatione voventis, sed ex se ad bonum finem conducat. . 47. c. 4. punct. 2. §. 3. n. 57.) because a foolish promise displeases God, and hence He does not accept it; and one who makes such vows venially sins, for example, if someone, alighting from a horse, should vow that he will ride no more. . moral. c. 7. » (with n. 55.) 205. — « 3. It is invalid to vow evil; and he who vows a mortal sin commits mortally. But one who vows a venial sin is said to have sinned venially only. Cajetan permits it to be possible to commit a mortal sin inadvertently in an oath.

» A vow, and according to 2. cap. 4. d. 5., that seems more probable. It is more probable to me that to vow evil, even venial evil, to be itself a grave fault; since from itself blasphemy is, to will that evil yield in honor of God; but commonly by reason of ignorance this is not except venially, as they well note § 4 n 74 at the end. We have also said regarding the oath n. 146. v. 5.

Venially. 206. — « 4. It is invalid if a condition or other adverse circumstance is attached to the vow from the part of the thing vowed: for example, one vows ## Chapter 3. On the vow.

Dub. 3. Alms given with intent to obtain vain glory, or to implore by it an unjust victory, a happy success of theft, adultery, etc., or in gratitude for such a sin; because almsgiving directed to such ends is a blasphemous act, as if God promoted sins; therefore, it cannot be the matter of a vow. Cajet. 4. t. 4. cap. 2. n. 6. cap. 5. 5.

It is valid, however, even though an evil end or some other bad circumstance is joined to it, holding itself only in part from the one who makes the vow: for example, if someone out of vain glory, or out of anger against a troublesome beggar, fosters the alms he will give: because then this good thing which he vows is valid, even though himself he vowed it

male and with sin. In the same place. Therefore note this difference between a wicked end vowed from the part of the thing vowed and from the part of him who vows: for the end from the part of the thing vowed is wicked when the promised thing is directed toward a wicked end; thus, if you vow a fast so that you may gain applause thereby, then your vow is null, as commonly taught with Busemb. 4. tract. 4. cap. 2. n. 7.

Psalm Ibid. n. 67. And they hold the same to be true, n. 68, with others, even if the wicked end of the vow is not primary, but merely secondary as a motive, or is even impulsive, but without which the vow would not be made. They likewise say that if the end be indifferent or merely temporal; hence, if anyone vow abstinence in order to avoid expenses; and almsgiving, lest he be thought avaricious, there is no vow.

The vow emitted for obtaining temporal goods from God, or for rendering thanks to Him, was valid, because it is good to hope these things from God, or to render thanks for them themselves. Thus n. 40 and n. 70 with n. 7 and n. 69 with Cajetan: then the vow is valid, because it fulfills the condition imposed; it is fitting in itself to fulfill a vow. Thus it is argued when the end is crooked on the part of the thing vowed.

Otherwise it would be thus, when an evil end is directed from the part of the one making the vow, namely, when not the thing vowed, but the very act of living is directed toward an evil end; for example, if someone externally vows fasting, so that by that act of vowing he may be condemned by others, then the vow is valid, as correctly stated in common authority among . and . n. 67. Hence it is said ibid. . But this seems to be least probative for me, if the consumption of fish is not rather a spiritual good of religion as the end of that vow; for then the very matter of the vow, which is the reception of the religious state, is directed to a vain end, which weakens the vow, as was said above with common consent. « 6. Validum item est votum factum ex affectu erga rem bonam, ut: bona est, etsi conjuncta cum causa mala: ut si quis voveret eleemosynam, 'si ex duello evaserit salvus, si non capiatur in furto; si filias sibi nascatur ex adulterio, quod parat, etc.: licet enim duellum, furtum; adulterium velle malum sit; tamen his postis, non laedi, non infamari, prolem gigni, mala non sunt, sed Dei dona; et votum non cadit super ista mala, sed super haec bona, considerata (ut suppono) quatenus in se bona sunt. 207. — « 7.

It is invalid and a venial sin to vow a good thing which impedes a greater good, especially vows against evangelical counsels, such as remaining in the world, taking a wife, going to markets at improper times, or engaging in commerce. Case. Question. 7. Number. 58. Translation of the target sentence:

"Tractatus 17, caput 4, punctum 4, §: 2, n. 37, eum S. Thomae 2-2, quaestio 89, articulus 7, ad 2) « 8." If nevertheless some good, lesser in itself and absolutely, were to be brought about through a greater good of an accident, then such things would be permissible to vow: for example, if someone should see the reception of Orders as likely to be harmful to him. See Bonaventurae, p. 4: 208. — Thus also does the Question turn, whether a vow of refraining from asking for dispensation, commutation, or irruption of a vow is valid even with just cause (for without just cause it is certain that it would be valid)? The first opinion denies this with the authority of St. Thomas.

Trul. . n. 49. et 50. And this seems more probable: by observing, that in a case wherein it would be more useful for the good of the spirit to petition for dispensation, the vow would not oblige even though it was valid. This vow, however, can always be relaxed by the superior, whose power is always preserved. § 54. But it should also be noted that he who makes a vow and does not seek dispensation may seek commutation; and conversely.

See note 52, p. 209. – « 9. Marriage is ordinarily invalidly vowed, because it is more excellently vowed celibately. It is ordered ordinarily, because it is validly vowed, 4.

If anyone is bound to do this; either without injury or grave infamy in respect to the betrothed, or because from such betrothals children cannot be separated. » 2. If it is thought that this would be very advantageous for the republic, namely, because, for example, it is hoped from it peace among princes, the conversion of heretics, and the tranquility of the kingdom. 3.

If anyone is so prone to fall by reason of weakness and the deeply rooted habit of sinning that prudent judges would consider it advisable for him to consult a document advising him to abstain from marriage: yet in this last number 6. . 12. . "The vow of chastity, speaking generally, has no merit, even if it is made for leading a pauper, a prostitute, or for removing alien sins, because it is always more pleasing to God in celibacy." It is common among n. 38 and 39 with the Saint.

Likewise, if the vow be made with the intention of causing scandal or honor to a girl out of an obligation to make reparation, or for the common good, as Bus. adds, supposing that he who makes the vow wishes to marry, he is bound by the vow, as stated in the conclusion. But a great question

arises, whether he who vows to marry out of experienced suspicion of foul play is bound by his vow? The first opinion denies this, because such a vow would be self-defeating with regard to a greater good, namely entering religion or maintaining celibacy?

Then, because such a vow would be useless, since, despite such a vow, one could freely enter religion; especially so, as marriage is the lowest remedy for concupiscence. Ita. 2. c. 40. dub. 7. n. 44. et ibid. n. 40. However, the second opinion is certainly and far more probable than that which they hold in Book 4, Chapter 8, Note 53; in Book 3, Annotation 3, Point 1, Section 2, Notes 41 and 42, with Bell., where it is said that a vow is valid, provided that such a person does not wish to use other remedies; because in such a case marriage is the greater good; since for those who are unwilling to accept better remedies for calming concupiscence, marriage has been granted by God.

For these things the Apostle says: It is better to marry than to burn. Above all, because here frequently recurring, he would be held by the law of nature to marry, provided that he did not wish to use other remedies. You might say: therefore, could a subdeacon who desires chastity marry if he could not contain himself, since marriage would be a better good for him?

But it is replied that for the sake of the common good it is more expedient for him to remain in his vow with its strength, than for him to consult his own weakness thus. See note 45. They also say that 42 should be held to be a young man who neither wishes nor is able to apply other remedies.

But they better say [or: but rather they say], citing chapter 4, tractate 4, book 2, note 12. SS. Here Rhonymus and Ambrosius, and Sporer in his prayer no. 64. and 62., that one is bound to marriage who does not wish to apply another remedy, but not he who cannot: for no one who wishes to use opportune remedies can be said not to be able to apply them; indeed, who else is prohibited from using at least prayer, which undoubtedly can overcome all concupiscences from that Luke 41.

Every one that asketh, receiveth? — Here it is asked whether, if any one be too ready to make vows, he may vow more than he has already vowed, provided he obtain permission from the confessor; but if afterwards he vow something, for instance a fast, will his vow be valid? I respond according to . 4. treatise 4. chapter 2. note 5. and I say 4. That is to say, the vow is indeed valid, since it pertains to a better good.

That he sinned by emitting himself according to the vow. 3. I say that,

notwithstanding the first vow, one is bound to the second, which being good in its object, is sufficiently valid. I accept, unless he shall decide that future vows shall not be valid unless confirmed by the confessor's counsel; for then there would be no second vow, provided that it is not expressly or virtually withdrawn, namely, if he should emit according to the memory of the first vow. . 74 Lib. 4.

Treatise 2. Concerning the second precept of the Decalogue. Finally, it must be noted that he who emitted more incompossible vows should have observed the more dignified ones; otherwise, the later would be preferred to the earlier.

Thus in the place with the Trullan and verse 2 against DOUBT IV. What is the obligation of a vow, and how great is it? Whether at some time a light vow concerning a trivial matter binds gravely? What if one neglects a light vow for a year? See other matters regarding Busemb. Is one bound to keep vows made by the dead? Can a father harm his legitimate children through vows? Vows made without one's consent. Can vows be fulfilled by another person? Whether one sins by hindering the fulfillment of a condition properly appended to one's vow? Noteworthy points concerning conditions in vows. Whether after the promised day has passed, are you bound by the vow? Whether perpetual vows always bind? And what, if a delay is mortal? 222 What, if someone vows to enter religion without a certain place, or a certain rule? 223 What, if someone vows never to eat under apple trees? 224 Many things are to be noted regarding vows, and especially whether a vow is binding if an unforeseen circumstance arises? 214. — « Resp.

So great is it, as much as both the quantity of the matter permits at that time and the intention of the one making the vow indicates, whether he wishes to be greatly, or slightly, or absolutely bound, or with a certain condition, restriction of time, quality, so that although the obligation of the vow is of natural law, yet its force depends on the will and act of man as a prior condition, in such a way that it binds only so much, or not at all. Thus common. See c. 3.

Whereupon it is resolved: « 4. In a matter of slight gravity, no one is bound under mortal sin, because the matter itself does not permit it. » (Neither would he be bound under grave penalty if he wished to bind himself, tr. 47. c. 4. punct. 4. §. 2. n. 406.) « . 4. c. » 12. for example, you have vowed to recite daily the Salve Regina: omitting it once and again, you do not sin mortally, because the matter is slight. . 4. c. 42. 24. cap. 45.

It is asked whether a transgression of a vow is mortal when its entire

matter is small? They affirm in the same manner as in a promissory oath, that whoever promises something light and does not fulfill it sins gravely (as these men say). But the opposite must be held in opposition to Bus. and . 2. c. 40. dub. 9. n. 56.

Sot. . ap. . n. 413. quia votum est lex particularis, et lex non obligat, nisi juxta gravitatem materiae. But the same must be said regarding the promissory oath, as . n. 415 and c. 2. punct. 5. §. 2. n. 53. with others, as we stated above in n. 473. Hence it is inferred that a vow to avoid sin does not obligate unless according to the gravity of that sin: for example, if you vow to avoid lying, by lying you would offend only lightly once against veracity, but twice, once against the vow and once against veracity. See n. 415. with . . Unless however the avoidance of that sin is due to a matter of great moment; as when lying would be very indecent for someone in an exalted position: or unless by that sin one is greatly hindered from progress in virtues. 212. — “But, although you omit this throughout the year, it remains only venial because such matters do not coalesce into a single grave matter, it teaches probably,” misc. n. 24. ex Soto, 2. d. 3. dub. 3.

Against Valentine, etc. As they also say in the same place and Croix, lib. 3, p. 1, n. 450, with Soto. For against this, if a promise concerning a trivial matter is made in such a manner that no day is assigned as a term, so that the obligation may not be delayed beyond it, then the matters coalesce and can reach the level of mortal sin. Wherefore, si quis voveat se daturum quotidie parvam eleemosynam, peccat graviter, si quotidie omittat, voto facto per modum unius. Thus. no. 415. with. no. 47. c. 1. punct. 5. no. 134. with. 220. v.

Whether. 213. — " 2. In a grave matter, even though one may bind oneself only lightly, (as is frequently proven in point 4, section 2, note 409, with Molina and others) nevertheless generally it is held that he intended to bind himself gravely, unless something else is established. Wherefore by violating such a vow one commits a grave sin in its own kind.

See ibid. §. 1. n. 93. et §. 2. n. 405. « 3. He who, after having bound himself by a grave vow, subsequently regrets what he has done and does not grieve seriously over it, does not sin gravely; provided that he retains the intention to fulfill it. See [Sa, v].

Vow. Liò. 4. Treatise 2. Of the second precept of the Decalogue. **- 4.**

He who violates a vow made before the precepts, for example, he who

after making a vow of chastity commits fornication, ought to add in confession that the vow had this effect before he received Ordination, and the confessor was unaware thereof, because then there is double malice in the sin. . 7. q. 7. "For by common good is valid the vow concerning another precept. . point 2. §. 1. n. 32. with S. Th. contra Eters." S.) - 5.

No one is bound by another's vow through the force of that vow. Whereby, if canonical penalties seem to indicate that a son is bound by religion to be held as devoted to the faith from his father's vow, they are understood thus: if the son has once ratified his father's vow. - . 6. ». punct. 4. §. 3. n. 418.» - 6.

When the heir is bound to dissolve the real vows of the deceased, he is not bound to fulfill the vows of the living; but according to justice: just as he is bound to other debts of the deceased, legacies, etc. - 214. — Certainly the heir is bound to dissolve the real vows of the deceased, according to other debts, as stated in 1. 2. Secondly, the laws concerning promises and from the Decretals on vows. From which [reason] one can be constrained to fulfill it through excommunication.

Hence such vows ought to be fulfilled before legacies, but after the due discharge of justice. n. 415. - 215. — Here it is asked whether a father can injure the legitimate rights of his children by means of vows in time of death? The first opinion affirms this, ibid. n. 126. As well (as those say), a father can burden the legitimate heir with remunerative donations. But the contrary must be held according to the second opinion. For a father can in his lifetime diminish somewhat the legitimate rights of his children or those ascending to legitimacy through vows moderated; yet not in death, where according to law he should dispose of his goods, and legitimately, what is due by right cannot be unjustly burdened.

Thus. n. 127. Commentary . - 216. — “7. In the same manner, if a community has vowed something to which posterity did not consent, they are not bound to observe it by virtue of the vow; but sometimes they are bound by reason of the pact, statute, or long-standing custom.

See - « 8. When one vows to perform another's act, it means that he will take care of that which he can lawfully perform, for instance, by praying, persuading, or commanding, if he be superior; and sometimes also by feeding, or even at one’s own expense. Thus a parent who has vowed to dedicate his son to religion is bound to strive to persuade the son to this end, if he can lawfully do so, such as by praying, persuading, or commanding, if he is superior; and also sometimes by feeding him, or providing sustenance. So too one who has vowed to have another’s wound

healed when constrained to pay for it, is not bound to find someone else to remedy the harm with expenses, if the prior party does not fulfill what he was obligated to do.

Sancho, 217. — "9. Personal vows are fulfilled only through a vow; hence he who has vowed a pilgrimage, for example to Rome, does not satisfy this vow by leading another person; nor is he bound to it if he himself cannot fulfill it. . 17. c. 1. punct. 4. §. 3. n. 121. « 10. Real vows are to be fulfilled from one's own resources; hence he who is unwilling to give from his own possessions is not bound to ask another for alms.

If he is able to do it from his own resources, and yet another one, whether requested or spontaneously, wishes to pay on his behalf, then this suffices; because what the other gives thereby becomes his own: but not an action of another person can be considered as his own. But he has sufficiently fulfilled his vow or oath through almsgiving given by another at that time unknowingly, but afterwards ratified when he knew; for then the vow is fulfilled with the consent of the one who made it. When thus it is done, etc., and it seems sufficiently probable; for as by such a manner he would have well satisfied the promise made to another man, so also does he sufficiently satisfy the promise made to God. 218. — « 11.

Vota conditiona ha non obligant, cessante conditione, etiamsi ipse vovens causa fuerit ut conditio non poneretur; dummodo id non impediverit dolo, vi aut malitia: ut, v. gr., vovisti peregrinationem si eam Petrus approbet; deinde submittis qui persuadet ut non approbet: illo igitur non approbante, non teneris. But even though you may have impeded yourself by malice, fraud, deceit, etc., it is still probable that you are not bound by your vow, as it is held from . And this is more probable according to . point 6. section 6. number 473. where it says that here rightly attention should be drawn to the intention of the one making the vow: for example, if a son vows to enter religion, unless his father contradicts him, it seems that his intention was not to proceed without the father's consent, unless he contradicts by himself, spontaneously, and leaving it to himself, etc. But, if you maliciously impede, you sin: for instance, you vowed to enter religion, if the father approves; if you prevent the father’s consent through prayers or reasons, you do not sin; otherwise, if you impede through force, or fraud, you sin.

Item vovisti castitatem, si Deus per annum te liberet a mortali: si tu ex fragilitate cadis, non peccas respectu voti. Thus, if you wilfully sin so as to be released from your vow. And thus concerning the rest. . n. 171. with; — As regards the conditions of vows, it is to be noted 4.

That all turbid or impossible conditions render vows null. . n. 165. Note 2. That for a vow to be binding, it is not sufficient that the condition be fulfilled equivalently, but it must be fulfilled specifically; for example, if you vowed to enter a religious order only if your sister marries, it is not enough if she dies. . n. 169. « 12. He who vowed a certain and definite thing, for example, this cup, "if that thing perishes, he is not bound to give another, since this is not usually intended; but if he has sold that thing, it seems more probable that he should be bound to give money equivalent to what he received · because he who vows a thing is considered to promise all its utility." 220. — "43.

He who has vowed to do something at a certain time, for example, to fast on this or that day, after the said day has passed, whether with fault or without fault, is not bound thereby, and he is not even bound if he foresaw an impediment about to occur at that time, since it is not usually intended by one who makes such a vow. . Book 4. See But the same rule which we mentioned above in no. 242 runs here as well from common article with 47. c. 1. p. 5. n. 430. For you are not bound to anything, after the day has passed, if the day has been assigned for the completion of the obligation; this must be considered in personal vows, unless it is otherwise established, as commonly stated by Croix in lib. 3, p. 1, n. 450, with Sot. punct. 4, § 2, and with ibid., punct. 5, n. 434, and with others, as mentioned above.

Whether, however, in a doubt, is the day appositus for terminating an obligation, or for soliciting and executing the vow for days passed, to be held with respect to the vow? He denies it in treatise 5, rubric 26, because, as he says, vows in doubt do not obligate strictly speaking, according to the common rule handed down by the Doctors with Cajetan on the second precept, note 409 and note 132, and by St. Thomas, namely, since a vow is certain and only its circumstance of excusing is doubted, possession counts as a vow. But this reasoning does not convince; for it could be replied that here there will be a doubt about a circumstance which affects the substance of the vow, and therefore the vow itself would become doubtful according to what is stated in n. 498.

Hence it seems to me more correct to distinguish and say that in personal vows in doubt one is not bound to fulfill for days already past; but rather in real vows. Reason, because from one side a firm rule is established, that possession stands for what presumption holds as to it, as the common Decrees teach with Busembaum, lib. 1, n. 26. Cross l. 1. n. 509.

Sanchez, Decretales, librum 4, capitulum 10, nota 43, cum Soto. Mol. Arag. et Menoch.

From another side, it is commonly held that, unless the contrary be established, as has been noted above, in real vows a day is presumed to be added only for the purpose of strengthening the obligation; see 1. n. 434. cum . Prado and Croix, l. 3, p. 1, n. 450, cum. gr., in that year you received grace, as . 17, c. 4, p. 5, n. 429, with others. Otherwise, if the day had no connection with the vow, namely, if you had promised to give alms on the sabbaths throughout the year without any special reason for that particular year, as he rightly says at the end.

In votis contra personalibus presupposes a day apposed to fulfill the obligation, as they say in § 2 p. 4 n. 145 and Croix loc. cit. with others as above cited. Hence in real vows, since the presumption is for the vow, even possession is for it, and therefore fulfillment must also be made even for days already passed. On the other hand, it must be said concerning personal vows, in which presumption is against the vow, and thus 224. — « 14.

He who has vowed something without a certain time, for example, pilgrimage, is bound only to fulfill it when he first can conveniently do so: because thus each one is considered morally to understand his own promise such that it is not unduly delayed by minor reasons, although a lesser cause suffices for deferring than for omitting. q. 10. An indeterminate vow as regards time, for example, a daily Rosary or fasting on Sabbaths, obligates perpetually, unless otherwise is gathered from circumstances. . 47. c. 4. punct. 6. §. 4. n. 140. communiter. If, however, there is a doubt whether the vow was for an entire year or for a month, you are not bound, unless at least it can be determined otherwise. . n. 146. with . de Censib.

It is asked, whether a person who makes a vow for an indefinite time will commit a mortal sin by delaying to fulfill it for a long time? It is certain that if the vow is perpetual obedience to God, such as entering a religious order, serving as an innkeeper, and similar matters, he who delays its fulfillment for a long time will sin lethally, provided there is an opportunity to fulfill it, and no reasonable excuse will be offered. They say however Armill.

Rodrigo. and from the state of religion tractatus 15. caput 2. punctuatio 3. nota 32. to differ the vow of religion by two or three years is not mortal; but this opinion seems rightly lax to others, as Sporer in the second precept note 417. Decretum 1, caput 4, numerus 14, nota 22. Others, speaking generally, say that it is mortal to defer for six months, and they adhere to this with .

Sporer himself agrees that a vow made by one who exceeds the age of forty years is mortal; yet he considers it: because (as they say), this time seems to be but trifling in comparison with the whole service of life; but on this point I absolutely do not acquiesce, unless there be a just cause for delay. The just causes for differing are, if the one who makes a vow hopes that through this delay his parents may be benefited financially. Item, si obstet gravissima necessitas spiritualis aut corporalis sororum vel fratrum.

Thus Croix l. 3. p. 4. n. 446. with 2. p. 5. n. 3. with dict. l. 4. c. 44. n. 5. and 6. and c. 2. n. 30. with . Pell. However, Sporer and others well observe at the end, in these cases one must be especially cautious to avoid excessive delay or for there to be no risk of a vow never being fulfilled; this risk is not uncommon in vows of religion, for whose fulfillment countless demons stir up dissensions and impediments. If however the vow be for temporal obedience, namely for so many fastings, pilgrimages, etc., it is deemed probable. praec. n. 146. cum .

And it is favorable to 4. c. 44. n. 21., referring to St. Augustine, who says that such a delay is mortal when there is a postponement for long periods of time, and from this very delay arises the danger of forgetfulness or impotence in fulfillment. But more correctly it should be said that one sins mortally by delaying the notable fulfillment of a vow without just cause, namely beyond two or three years; as rightly Croix l. 3. p. 4. 446. and loc. cit. n. 32. state, and Garcia. Croix with Diana thinks, that if you have vowed to contribute each month, you could lawfully defer fulfillment by two or three days beyond a month's time for cause. - 16.

He who has vowed something without a certain quality, for example, that he will enter religion generally, may enter any [order], even a laxer one, provided the essentials are observed and it is approved. Similarly, si quis voverit triticum, etc., non tenetur dare optimum quod habet, sed satis est ut det quod non sit plane ineptum. (Idem 17. c. 4. punct. 6. §. 1. n. 140. cum 17.) He who has vowed himself to give something without a certain quantity, for example, alms, money, grain, etc., satisfies by giving whatever he has willed.

DD.) - modo non det tam parum, ut videatur potius ridere suum votum quam implere. The reason for all this is sought in the intention of the one who makes the vow, by which no one is considered bound, except to that which he can conveniently give and generally it is fitting to give. . l. 4. c. 43. • 18. In dubio de mente voventis debet fieri interpretatio secundum proprietatem verborum quibus usus est vel potius communem et usitatam acceptionem. c. 2.

From note 434. 223. — • 49. Whoever has made a vow and says that he will give ten imperatives, is bound according to . It seems, however, that this denies it. IV. treatise. IV. c. 5. n. 4.

See T. 9. R. 60. They distinguish well. §. 7. n. 477. If the vow was simple concerning the payment of a penalty and he has transgressed; then it suffices to pay the penalty once, since they sufficiently approve it as probable.

Otherwise, if the vow be double, namely, not to play and to make reparation for the penalty: then, whenever he transgresses the vow, reparation must be made for the penalty; unless this be a very grave matter, such as exile, bestowal of great alms, which are not commonly repeated. Thus. When. Truly.

Here it must be noted that in such a double penitential vow, if the first is relaxed, the second is also relaxed accordingly as the first accessory. See no. 475 and 477, 224 — Recently, several things are also to be noted here alike, and I. that vows are always to be interpreted according to the more favorable part. §3, no. 148. cum., and others commonly. II. Notandum quòd fractiones votorum sint ejusdem speciei: hinc, si quis habens votum castitatis fornicetur, potest seorsim fractionem voti confiteri.

But what if someone vows a fast out of a special motive of temperance? Val. ibid. n. 402. hold it probably, that by breaking a fast one commits two sins. They likewise hold that a husband who vows chastity, out of love for chastity itself, if he should violate this vow by fulfilling a debt, is said to commit two sins.

But it is more probable to hold as stated in n. 403 and by Cajetan and Pradus, that one mortal sin is committed against a vow, because from the vow they impose upon themselves an obligation solely of fidelity towards God, and not another. Note III. That if anyone vows a good thing, or an evil thing, or a vain thing, or an impossible thing, no vow is made. . punct. 6. §. 4. n. 444. If however both parts are apt matter, that which is chosen ought to be supplied, even though after the choice the other part perishes or becomes impossible.

Conversely, if one part perishes or becomes impossible before the election, you are not bound to the other, unless your own fault causes its perishing, or you were delayed in delivering or determining it. Thus and 442. cum. Mol. etc. Here it is asked whether one can vow to exchange a part already

elected with another?

They probably deny that one can change one already chosen part of a vow with another. Wherefore, if one part that has been elected concerns something reserved as matter, such as chastity, etc., a papal dispensation is required. However, Leander and Ratio affirm that, despite the fact that a choice has been made, the vow remains disjunctive, and thus by no means through determination accomplished does one deprive oneself of liberty to choose another part.

He who vows that he will hear the sacred Word for a month is probably not bound to have it heard twice on feast days. Just as this is also probable if it is imposed by the confessor for penance. . 17.c. 1. punct. 6. §. 1. n. 136. cum . . c. 2. n. 96. ac Croia de pœnit. n. 284. He who vows to recite the Rosary satisfies by reciting one-third of it, because this is commonly understood thus. . n. 136. cum . . in fin. cum .

And likewise he satisfies himself by dividing decades, loc. cit. in fin. cum Qui vovet jejunium se observaturum, potest comedere lacticinia, ut . n. 137. cum . If one vows to fast per mensem, he is not bound on Sunday; or if one vows to fast in the vigil of some saint that falls on Sunday, he may anticipate the fast to Saturday, . cum Bonac. If one having vowed abstinence from meat eats flesh, he is not bound to fast: in distinction from the fast commanded by the Church, which imposes twofold precept, both fasting and abstinence from flesh, according to . vide 1. 5. n. 992.

If one has vowed jejunium on each sabbath, is he bound by his vow if Christmas falls on a sabbath? They probably deny it. Azor, ibid., n. 438, et Bonaventura probantem vocant, in tom. 2, disp. 4, q. 2, p. 6, n. 9 et n. 13, nisi expressè intenderit adhuc eo die se velle obligare, quia tunc procul dubio tenetur.

They nevertheless affirm, ibid., n. 439: If anyone, forgetful of a vow or of penitential commands, etc., performs the required work, he sufficiently satisfies his general will to satisfy prior obligations, which is considered by each one as having an obligation to satisfaction; thus Sporer treats it in Book 1, Chapter 50, Number 45; and in Book 2, Chapter 37, Number 41; and in Book 4, Treatise 2, Chapter 41, Number 9. If anyone is certain about his vow, but has a probable reason that he has already fulfilled it, many authorities say that the one who vowed is not bound to nothing. But to this opinion we have already said in the treatise on conscience that it is not to be adhered to, because the obligation of a certain vow is not fulfilled by any probable satisfaction (4). (1) See the note at 1. 1. n. 19. placed and also in this book n. 760.

Question NoneII, at the end. V Doubt.

In how many ways is the obligation of a vow removed? It is removed in one way: 1. By reason of a change in matter. 2. By human authority.

See resolutions. 13 Whether there is an obligation to fulfill a vow if a non-previous circumstance supervenes: And what about simple vows of chastity and religion, and what about solemn ones? I have seen. 1. n. 10. 225.— "Resp." It can be removed in two ways, 4.

Without intervention of authority: this either through a material change; so that if matter which was previously honorable becomes disgraceful, indifferent, or obstructive to a greater good, by reason of new circumstances, or prohibition, or is made absolutely or morally impossible, or ceases from the condition upon which it depended. 2. Interventa auctoritatis humanae: idque tripliciter, irritatione, commutatione, vel dispensatione, de quibus in sequentibus debitis. It is common, Saveth. 1. 4. c. 24. . 2. c. 24.

Staur. c. 8. Whereupon you resolve: • 4. It is your fault that it has been made impossible, useless, etc.; nevertheless, once such a state has been reached, the obligation ceases, and it suffices to set aside the guilt. • 2.

If the obligation of two incompatible vows concur, what is due in terms of fulfillment must be given to God with gratitude, and the other vow ceases. Nam si vero sit aequale aut nescias quidem, melius esse, implendum est primum quod vovisti, et ruat posterius; si hoc etiam nescis, liberatur electio. See. 2. c. 2. d. 9. • 3.

If the matter of the vow becomes impossible as regards only a part thereof, then, if such a matter of vow cannot be divided conveniently or does not usually so happen, thou art bound to nothing rashly: word of grace, thou promisedst to build a temple; if thou canst not do it wholly, thou art not bound to a part. • 4. If, however, it can be conveniently divided and usually does so, the obligation remains for that part which can be fulfilled, e.g., 4. Quicumque non potest jejunare tota hebdomada, potest autem aliquot diebus, ad hoc tenetur. 2.

He who has contracted and consummated a marriage after having made a vow of chastity is bound not to seek debt; since the vow is still possible (for he must make reparation). See § 4. • 5. Now if a vow can indeed be divided, but in it there is one principal element, and the rest accessory

only, not intended by themselves separately, but depending on it as its appendages and modes; then, if the principal becomes impossible, the obligation of the accessories also collapses, not otherwise: for example, you vowed a pilgrimage to Rome during a festival, and there 74 Lib. 4. Treatise 2.

Concerning the second precept of the Decalogue. Finally, it must be noted that he who emitted more incompossible vows should have observed the more dignified ones; otherwise, the later would be preferred to the earlier. Thus in the place with the Trullan and verse 2 against DOUBT IV.

What is the obligation of a vow, and how great is it? Whether at some time a light vow concerning a trivial matter binds by grace? If you neglect a light vow for a year, what then? See other matters regarding Busemb. Is one bound to keep vows made in honor of the dead? Can a father harm his legitimate children through vows? Vows involving another's property. Can vows be fulfilled by someone else? Whether by hindering the fulfillment of an appropriate condition he has imposed on his own vow, does one sin? One should not concern oneself with conditions in vows. Whether after the day of promise you are bound to the vow? Whether a vow indeterminate in terms always binds? And what, if a delay is mortal? What if someone vows to enter religion without a certain place, or a certain religious order? What if someone vows never to eat under apple trees? Many notable points to consider regarding vows, and especially whether a vow should be held binding if an unforeseen circumstance arises? 214. — « R esp. So great is it, as much as both the quantity of the matter permits at that time, and the intention of the one making the vow indicates, whether he wishes to be greatly, or slightly, or absolutely bound, or with a certain condition, restriction of time, quality, so that although the obligation of the vow is of natural law, yet its force depends on the will, and the act of man as a prior condition, in such a way that it binds only so much, or not so much.

Thus common. See c. 3. Whereupon it is resolved: « 1.

In the case of a light matter, no one is bound by mortal penalty, because the matter itself does not permit it. » (Nor even if one wishes to bind himself under a grave penalty, according to 17. c. 1. punct. 4. §. 2. n. 106.) « . 4. c. » 12. For example, you have vowed to recite daily the Salve Regina: if you omit it once or twice, you do not sin mortally, because the matter is slight. . 4. c. 12. 24. cap. 45. It is asked whether a transgression of a vow is mortal when its entire matter is small?

They affirm in the same manner as in a promissory oath, that whoever promises something light and does not fulfill it sins gravely (as these men

say). But the opposite must be held in opposition to Bus. and . 2. c. 40. dub. 9. n. 56. Sot. . ap. . n. 413. quia votum est lex particularis, et lex non obligat, nisi juxta gravitatem materiae.

Indeed, the same must be said regarding the promissory oath, as . n. 415 and c. 2. punct. 5. §. 2. n. 53. with others, as we stated above in n. 473. Hence it is inferred that a vow to avoid sin does not obligate unless according to the gravity of that sin: for example, if you vow to avoid lying, by lying you commit a sin only lightly once, but twice, against truthfulness and against the vow. See n. 145 with . . Nisi however the avoidance of that sin be due to reasons of great moment, as when lying would be very indecent for a person in high office: or unless that sin greatly impedes one from making progress in virtues. 212. — “Imò, etsi totum anno omittas, esse tantùm veniale, eò quòd materiae istæ parvæ non coalescant in unam, probabiliter docet” misc. n. 24 ex Soto, 2. d. 3. dub. 3. Against Valentine, etc. As they also say in the same place and Croix, lib. 3, p. 1, n. 450, with Soto. For against this, if a promise concerning a trivial matter is made by way of a single act, so that no day is assigned as a term, but so that the obligation may not be delayed beyond it, then the matters coalesce and can reach the level of mortal sin.

Wherefore, si quis voveat se daturum quotidie parvam eleemosynam, peccat graviter, si quotidie omittat, voto facto per modum unius. Thus. no. 415. with. no. 47. c. 1, punct. 5. no. 434. with. 220. v. Whether. 213. — "2.

In a serious matter, although one may bind oneself only lightly (as is commonly approved in point 4, §2, n. 409, with Molina, etc.), nevertheless it is generally considered that he intended to bind himself seriously unless otherwise is evident. Whereby he who violates such a vow sins gravely in its very nature. See ibid. §. 4. n. 93. and §. 2. n. 105. 3.

He who, after having severely bound himself by a grave vow, subsequently regrets that he has done so and does not sin gravely; provided that he merely retains the intention to fulfill it. See [Sa, v]. Prophets. • 4.

He who violates a vow made before precepts, for example, he who after the vow of chastity commits fornication, ought in confession to add that the vow had this effect, or that he had received orders, and the confessor was unaware thereof, because then there is double malice in the sin. . 7. q. 7. "For by common good a vow concerning other precepts is valid. . point 2. § 4. n. 32. with S. Th. contra Gers." S. » « 5.

No one is bound by another's vow through the force of that vow. Wherefore, if those who seem to indicate that a son is held bound by the vow of his father devoted to religion are understood to mean that the son has once ratified the father's vow. ». 6.

(. punct. 4. §. 3. n. 418.) « 6. When the heir is held to dissolve the real vows of the deceased, he is not bound by the force of the vow, but by justice: just as he is held to dissolve other debts, legacies, etc. 214. — Certainly the heir is held to dissolve the real vows of the deceased, like other debts according to 1. 2. Secondly, the laws concerning promises and from the chapter On Vows.

From which it can be compelled to fulfill by means of excommunication. Hence such vows ought to be fulfilled before debts are paid, but after due justice has been rendered. n. 125. 215. — It is asked here whether a father may injure the legitimate rights of his children through vows made in death? The first sentiment affirms as in the aforementioned note n. 126.

Just as well (as those men say), a father can burden the legitimate heir with reparations through donations. But the opposite must be held with the second opinion. For a father can in his lifetime diminish somewhat the legitimate portion of his children or ascendants by moderate vows; yet not at his death, where according to the law he should dispose of his goods, and having a rightful claim, he ought not to be burdened with an undue vow, according to verse 24.

The immolation from an unequal offering is tainted. Thus n. 127. with etc. 216. — "7. Otherwise, if the community has promised something to which the posterity did not consent, they are not bound to fulfill it by virtue of the vow, but rather by reason of the pact, statute, or long-standing custom.

See « 8. » When one vows to do another's act, it means that he will take care of it in such a way as he can lawfully, for example, by asking, persuading, or even ordering if he is superior; or also sometimes by feeding and supplying expenses. Thus a parent who has devoted his son to religion is bound solely to endeavor to persuade the son thereof: so also he who has vowed masses or a pilgrimage for another's cure is not bound to substitute someone else without expenses, if the prior does not fulfill what he was obligated to provide.

Sanchez, 217. — « 9. Personal vows are fulfilled only by the one who makes them; hence he who vowed a pilgrimage to Rome, for example, does not satisfy his vow if he sends another in his stead; nor is he bound to

do so if he himself cannot go. Real vows are to be fulfilled from one's own means; hence he who is unable to fulfill them from his own resources is not bound to beg from another.

If he is able to do it from his own resources, and yet another one, whether requested or spontaneously, wishes to pay on his behalf, then this suffices; because what the other gives then becomes his own: but not an action of another person can be considered as his own. But, he who makes alms-giving in lieu of a vow or an oath, when he has received it from another with that intention, and afterwards ratifies it himself after knowing, then satisfies the vow because consent is given by him. When therefore he has satisfied the vow or oath in such a manner as to have done well by another person to whom it was made either without being asked or spontaneously, and afterwards ratifies what he had previously done unknowingly when he knows about it, then his vow is fulfilled with the consent of the one who vowed. 218. — « 41.

Conditional vows do not oblige when the condition ceases, even if the one who vowed was the cause that the condition not be set; provided that this did not come about through deceit, violence, or malice: for example, you vowed a pilgrimage, if Peter approves it; then you submit to someone who persuades you not to approve it: therefore, if he does not approve, you are not bound. But even though you may have hindered it through diligent effort, fraud, deceit, etc., it is still probable that you are not bound by the vow, as it is held. And this is more probable according to . punct. 6. §. 6. n. 473. with Pgl. : Meanwhile: for instance, if a son vow himself into religion, unless his father contradicts, it seems that his intention was such that, unless the father contradicts of his own accord, spontaneously, being left to himself, etc. But, if you impede him dishonestly, you sin: You vowed, for example, religion, if the father approves; but if you hinder the father’s consent by prayers or reasons, you do not sin; otherwise, if you impede by force, or fraudulently.

Item vovisti castitatem, si Deus per annum te liberet a mortali: si tu ex fragilitate cadis, non peccas respectu voti. Thus, if you wilfully sin that your vow may be annulled. And thus concerning the rest. . n. 171. with; — As regards the conditions of vows, it is to be noted 4.

That all turbid or impossible conditions render vows null. . n. 165. Note 2. That for a vow to be binding, it is not sufficient that the condition be fulfilled equivalently, but it must be fulfilled specifically; for example, you vowed to enter religion if your sister should marry, and it is not enough if she dies. . n. 169. « 42. He who vowed a certain and determined thing, for example, this cup, "4.

He who violates a vow concerning something already prohibited by precept, for example, he who after taking the vow of chastity commits fornication, ought to add in confession that he has received such a vow or orders, and the confessor is unaware thereof, because then there are two kinds of malice in the sin. . 7. q. 7. "For by common good a vow concerning something other than precepts is valid. . point 2. § 1. n. 32. with S. Th. contra Gers." S. » « 5.

No one is bound by another's vow through the force of that vow. Wherefore, if those who seem to indicate that a son is bound by the vow of his father devoted to religion from the father are understood to mean, then it is understood that if the son has once ratified the father's vow. ». 6.

(. punct. 4. §. 3. n. 418.) « 6. When the heir is bound to dissolve the real vows of the deceased, he is not bound by the force of the vow itself, but by justice: just as he is bound to dissolve other debts, legacies, etc. 214. — Certainly the heir is bound to dissolve the real vows of the deceased, like other debts according to 1. 2. Secondly, the laws concerning promises and from the chapter On Vows.

From which it can be compelled to fulfill by means of excommunication. Hence such vows ought to be fulfilled before debts are paid, but after due justice has been rendered. n. 125. 215. — It is asked here whether a father may injure the legitimate rights of his children through vows made in death? The first sentiment affirms as in the aforementioned note n. 126.

Just as well (as those men say), a father can burden legitimate heirs with recompensing gifts. But it must be held 'contrary to the second opinion. For a father can in his lifetime diminish somewhat the legitimate rights of his children or ascendants by moderate vows; yet not at his death, where according to the law he should dispose of his goods, and having been legitimately entitled thereto by right, he ought not to be burdened with an undue vow, according to verse 21.

The victim was gnawed by an offering made unjustly. Ita. n. 127. cum. etc. 216. — « 7. Otherwise, if the community has promised something to which the posterity did not consent, they are not bound to fulfill that by virtue of the vow, but rather by reason of the pact, statute, or long-standing custom.

See « 8. » When one vows to do another's act, it means that he will take care of it in such a way as he can lawfully, for example, by asking, persuading, or even ordering if he is superior; or also sometimes by

promising and supplying expenses. Thus a parent who has devoted his son to religion is bound only to endeavor to persuade him thereof: so also he who has vowed masses or a pilgrimage for another's cure, when he has provided the stipend and expenses, is not bound to substitute another. Cap. 3.

Of the vow. Dub. 4. - if the means are lacking, and the prior does not provide what he has undertaken to provide. Sanchez, 217. — "9."

Personal vows are fulfilled only through a vow; hence he who has vowed a pilgrimage, such as to Rome, does not satisfy this vow if he leads another; nor is he bound to it if he himself cannot fulfill it. . 47. c. 1. punct. 4. §. 3. n. 121. « 40. Real vows are to be fulfilled from one's own resources; hence he who is unwilling to give from his own possessions is not bound to ask another for alms. If he is able to do it from his own resources, and yet still wishes to provide otherwise, whether upon being asked or spontaneously, this counts; because then what another gives becomes his own: but an action performed by one person cannot be considered as that of another.

But he has sufficiently fulfilled his vow or oath of almsgiving, who after having already performed it for another with that intention, afterwards ratifies it when he knows; because then the vow is fulfilled with the consent of the one who made it. Cap. etc. Et satis probabile videtur; sicut enim talia modo bene satisfieret promissioni, alteri homini factae, sic etiam satisfit promissio facta Deo. 248. — « 41. Conditional vows do not oblige when the condition ceases, even if the one who vowed was the cause that the condition not be set; provided always that this did not come about through deceit, violence, or malice: for example, you vowed a pilgrimage, if Peter approves it; afterwards you submit to someone who persuades you not to approve it: therefore, when he does not approve it, you are not bound.

But even though you have maliciously impeded it through fraud, deceit, etc., it is still probable that you are not bound by the vow, as it is held from . And this is more probable according to . point 6. section 6. number 473. with Pijl. : Meanwhile: for example, if a son vows that he will enter religion unless his father contradicts him, it seems that his intention was that, unless the father contradicts him of himself, spontaneously, being left to himself, etc. But, if you impede him dishonestly, you sin: You vowed, for instance, religion, if the father approves; but if you hinder the father's consent by prayers or reasons, you do not sin; otherwise, if you impede by force, or fraud. Item vovisti castitatem, si Deus per annum te liberet a mortali: si tu ex fragilitate cadis, non peccas respectu voti.

Thus, if you wilfully sin so as to be released from your vow. And thus concerning the rest. . n. 171. with; — As regards the conditions of vows, it is to be noted 4. That all turbid or impossible conditions render vows null. . n. 165.

Note 2. That for a vow to be binding, it is not sufficient that the condition be fulfilled equivalently, but it must be fulfilled specifically; for example, if you vowed to enter a religious order only if your sister marries, it is not enough if she dies. . n. 169. « 42. He who vowed a certain and definite thing, for example, this cup, "if that thing perishes, he is not bound to give another, since this is not usually intended; but if he has sold that thing, it seems more probable that he should be bound to give money equivalent to what he received · because he who vows a thing is considered to promise all its utility." 220. — "43. He who has vowed to do something at a certain time, for example, to fast on this or that day after another has passed, whether with fault or without fault, is not bound thereby; and even if he foresaw an impediment about to occur at that time, he was not bound to anticipate it, since such was not the intention of the one making the vow. . lib. 4.

See But the same rule which we have stated above at no. 242 runs here from common article with chapter 47, part 1, page 5, note 430. For to nothing is one bound after the day has passed, if the day has been assigned for the completion of the obligation, as must be held in personal vows, unless it be otherwise established, as commonly they say Croix lib. 3. p. 4. n. 450. with Sot. . punct. 4. §. 2. and ibid. punct. 5. n. 434 and with others, as above. Whether, however, in a doubt as to which day is apposite for terminating or for soliciting the execution of a vow, it should be held for the vow made on days that have passed?

It denies, tract. 5. r. 26., that vota in dubio obligant, because, as he says, they do not bind strictly when interpreted according to the common rule laid down by DD. with Cajet. de 2. præc. n. 409 and . n. 432 with S. Thom . because, since a vow is certain and only doubt exists concerning an excusing circumstance, possession counts as a vow. But this reasoning does not convince; for it could be replied to him that a doubt will arise concerning a circumstance affecting the substance of the vow, and thus the vow itself would become doubtful according to what is stated in n. 498. Hence it seems to me more correct to distinguish and say that in personal vows in doubt one is not bound to fulfill for days already past; but rather in real vows.

Reason, because from one side a firm rule is that possession stands for what presumption establishes, as the common Decrees with Busembaum

teach in Book 1, number 26. Cross l. 1. n. 509. Sanchez, Decretales, librum 4, capitulum 10, nota 43, cum Soto.

Mol. Arag. et Menoch. From another side, it is commonly held that, unless the contrary be established, as stated above, in real vows days are presumed to be added merely for the purpose of soliciting the obligation, according to 1. n. 434. cum .

Vasg. 3. p. 1. n. 450. cum. gr. in that year you received grace, as . 47. c. 4. p. 5 n. 429. cum aliis. Thus, if the day had no connection with the vow, namely, if you had merely wished to give alms on the sabbaths throughout the year without any special reason pertaining to that particular year, as correctly stated at the end. In contravention of personal vows, it is presumed that a day is added to fulfill the obligation, as they say in § 2, n. 145, p. 4, and Croix loc. cit., as above, alluded to.

Hence in real vows, since the presumption is for the vow, it is also for the possession itself; and therefore fulfillment must also be made even for the days that have passed. On the contrary, it must be said regarding personal vows, in which presumption is in opposition, and thus 224. — « 14. Who vowed something sine certo tempore, verbi grati pilgrimage, is bound to fulfill it only when conveniently first can: because thus each one is considered morally to understand his promise, although he does not unduly delay it even with a lesser cause sufficient for deferring than for omitting. q. 10. etc. — Indefinite vow as regards time, e.g., daily rosary, white shirt on Saturdays, obligates perpetually unless otherwise is gathered from circumstances. . 47. c. 4. punct. 6. §. 4. n. 140. communiter.

If however there is a doubt whether the vow was for an entire year or a month; you are not bound, unless at least for the shorter period. . n. 146. cum . de Censio. It is asked whether one who makes a vow for an indeterminate time commits a mortal sin if he delays fulfilling it for a long time? It is certain that if the vow be perpetual obedience to God, or putting oneself under religion, or serving as a xenodochium, or similar matters, one will sin lethally who delays long in fulfilling it, provided there be an opportunity for fulfillment and no reasonable excuse.

They say however Armill. Rodrigo, et de statu religionis tr. 45. c. 2. punct. 3. n. 32. differre votum religionis per duos vel tres annos non esse mortale; sed haec opinio merito videtur laxa aliis ut Sporer de 2 praecepto n. 117. Decretum libri quarti capitulum quatuor numero viginti duo.

Others, speaking generally, say that it is mortal to defer for six months,

and they adhere to this with respect to . Sporer himself agrees that a vow made by one who exceeds the age of forty years is mortal; yet he considers it: because (as they say) this time seems to be but slight impediment in comparison with the whole service of life: but on this point I absolutely do not agree, unless there be a just cause for delay. Justae autem causæ differendi sunt, si vovens speret dilatione parentes emolliendos.

Item, si obstet gravissima necessitas spiritualis aut corporalis sororum vel fratrum. Thus Croix l. 3. p. 4. n. 446. cum 2. p. 5. n. 3. cum dict. l. 4. c. 44. n. 5. et 6. et c. 2. n. 30. cum . Pell. However, Sporer and others well observe at the end, in these cases one must be especially cautious to avoid excessive delay or for there to be no risk of a vow never being fulfilled; this risk is not uncommon in vows of religion, for whose fulfillment countless demons stir up dissensions and impediments.

If however the vow be for temporal obedience, namely for so many fastings, pilgrimages, etc., it is deemed probable. praec. n. 146. cum . And it is favorable to 4. c. 44. n. 24., referring to St. Augustine, who says that such a delay is mortal when there is a postponement for long periods of time, and from this very delay arises the danger of forgetfulness or impotence in fulfillment. But more correctly it should be said that to mortal sin he commits who notably delays the fulfillment of a vow without just cause for more than two or three years; as rightly Croix l. 3. p. 4. 446. and loc. cit. n. 32. state, and Garcia.

Croix with Diana thinks, that if you vowed to confess each month, you could delay this confession by two or three days beyond a month for just cause. 222. — • 15. He who has vowed something without a certain place, for instance, wheat to enter, etc., is not bound to give the best that he has, but it suffices that he gives what is not entirely inappropriate (speaking precisely of the obligation). "(Idem. 17. c. 4. punct. 6. §. 4. n. 140. cum « 17."

He who promises himself to give something without a certain quantity, for example, grain, etc., is not bound to give the best that he has, but it is sufficient that he gives what is not entirely inappropriate. "alms, money, grain, etc., satisfied by giving whatever he had promised." DD.) "modo non det tam parum, ut videatur potius ridere suum votum quam implere."

The reason for all this is sought in the intention of the vow-taker, by which no one is considered bound, except to what he can conveniently give and generally deems fitting. l. 4. c. 43. 18. In dubio de mente voventis debet fieri interpretatio secundum verbum, quibus usus est, proprietatem vel potius communem et usitatam acceptionem. c. 2. From note 134. 223. —

19.

Whoever has made a vow, if he plays with charters, and promises himself to be subject to ten imperious commands, is bound according to . It seems, however, that this denies it. Fourth treatise, fourth chapter, fifth note, number four. See Tenth Topic, Rule 60.

They distinguish well. §. 7. n. 477. If the vow was simple regarding the payment of punishment, if it has erred; then it suffices to pay the penalty once, since And it is sufficiently probable: they are called . Otherwise, if the vow be double, namely, not to play and to make reparation for the penalty: then, whenever he transgresses the vow, reparation must be made for the penalty; unless this be a very grave matter, such as exile, largesse of great alms, which are not commonly repeated.

Thus. When. True. when. See n. 475 and 477.224 — Many things are to be noted together at the end, and first that vows are always to be interpreted according to the more benign part. §3, n. 148 cum et aliis communiter.

II. Notandum quod fractiones votorum sint ejusdem speciei: hinc, si quis habens votum castitatis fornicetur, potest seorsim fractionem voti confiteri. But what if someone vows a fast for a special reason of temperance? Val. ibid. n. 402. hold it probably to be a case of two sins to commit a fast-breaking.

Tantummodo conjugem voventem castitatem ex motivo amoris erga castitatem, si petat debitum, dicunt committere duo peccata. But it is more probable to hold as stated in n. 403 and by Cajetan and Pradus that one mortal sin is committed against a vow, because from the vow they impose upon themselves an obligation only of fidelity towards God, not another. Note III. That if anyone vows a good thing, or an evil thing, or a vain thing, or an impossible thing separately, the vow is none at all. . punct. 6. §. 4. n. 144.

Si vero ambas partes sunt materia apta, illa, quae eligitur, praestanda est, etiamsi post electionem altera pars pereat, seu impossibilis reddatur. Contrafacie, si pereat una pars aut impossibilis reddatur ante electionem, non tenes ad alteram, nisi tua culpa res pereat, aut fueris in mora eam tradendi, aut determinandi. Thus and 142. cum.

Mol. etc. Here it is inquired whether one who has already elected one part can vow to exchange it for another? They probably deny "4." He who violates a vow concerning a matter already previously commanded, for

example, he who after having taken the vow of chastity commits fornication, ought to add in confession that the vow has this effect, or that he has received ordination, and the confessor is unaware thereof, because then there are two kinds of malice in the sin. . 7. q. 7.

"(For from common good alone is valid a vow concerning other precepts." S. » « 5. No one is bound by another's vow through the force of that vow.

Wherefore, if those who seem to indicate that a son is bound by the vow of his father devoted to religion from the father are understood to mean, then it is understood that if the son has once ratified the father's vow. ». 6. (. punct. 4. §. 3. n. 418.) « 6.

When the heir is bound to dissolve the real vows of the deceased, he is not bound by the force of the vow itself, but by justice: just as he is bound to dissolve other debts, legacies, etc. 214. — Certainly the heir is bound to dissolve the real vows of the deceased, like other debts according to the law. Secondly, from the statutes on politics and from the canon concerning a vow. From which [reason] one can be constrained to fulfill it through excommunication.

Hence such vows ought to be fulfilled before debts are paid, but after due justice has been rendered. n. 425. 215. — It is asked here whether a father may through his vows harm the legitimate rights of his children in time of death? The first sentiment affirms as in the aforementioned note n. 426. Just as well (as those men say), a father can burden legitimate heirs with recompensing donations.

But it must be held 'contrary to the second opinion. For a father can in his lifetime diminish somewhat the legitimate rights of his children or ascendants by moderate vows; yet not at his death, where according to the law he should dispose of his goods, and having been legitimately entitled thereto by right, he ought not to be burdened with an undue vow, according to verse 24. The immolation from an unjust offering is tainted.

Thus. n. 427. cum. etc. 216. — “7. Otherwise, if the community has promised something to which the posterity did not consent, they are not bound to fulfill it by virtue of the vow, but rather by reason of the pact, statute, or long-standing custom. See « 8. »

When one vows to do another's act, it means that he will take care of it in such a way as he can lawfully, for example, by asking, persuading, or even ordering if he is superior; or also sometimes by agreeing and providing

expenses. Thus a parent who has devoted his son to religion is bound only to endeavor to persuade him thereof: so also he who has vowed masses or a pilgrimage for another's cure by paying the stipulated sum and expenses is not bound to substitute someone else at greater expense if the prior does not provide, to which he was obligated. Sancho, 217. — « 9.

Personal vows are fulfilled only by the one who makes them; hence he who vowed a pilgrimage to Rome, for example, does not satisfy the vow if he sends another in his stead; nor is he bound to it if he himself cannot fulfill it. . 47. c. 4. punct. 4. §. 3. n. 424. « 40. Real vows are to be fulfilled from one's own resources; hence he who is unwilling to fulfill them from his own means is not bound to beg from another. If he is able to do it from his own resources, and yet another, whether requested or spontaneously, wishes to pay on his behalf, this suffices; because then what the other gives is considered as if done by himself: but not an action of another person can be considered as an action of a different individual.

But, nevertheless, he has sufficiently fulfilled his vow or oath by alms given at another's request, after having himself been unaware thereof, but afterwards ratifying it upon learning; for then the vow is fulfilled with the consent of the one who made it. As it has been said, etc., and this seems sufficiently probable; for as by such a manner he well satisfied the promise made to another man, so also does he sufficiently satisfy the promise made to God. 218. — « 41. Conditioned vows do not oblige when the condition ceases to be, even if the one who vowed was the cause that the condition not be set; provided that he did not impede it by fraud, violence, or malice: for example, you vowed a pilgrimage if Peter should approve it: then you submit to someone who persuades you not to have Peter approve it: therefore, when Peter does not approve, you are not bound. However, even though you may have impeded it maliciously, through fraud, or by violence, it is still probable that you are not bound by the vow, as it is held.

» (And this is more probable according to point 6, section 6, number 473 with Pgl.) « In the meantime: for example, if a son vows to enter religion, unless the father contradicts, it seems that his intention was to do so, unless the father contradicts of himself, spontaneously, being left by him, etc. » But, if you obstruct dishonestly, you sin: You vowed, for instance, religion, if the father approves; if you prevent the father’s consent through prayers or reasons, you do not sin; otherwise, if you obstruct through force, or fraud. Item vovisti castitatem, si Deus per annum te liberet a mortali: si tu ex fragilitate cadis, non peccas respectu voti. Thus, if you wilfully sin so as to be released from your vow.

And thus concerning the rest. . n. 471. with; — As regards the conditions of vows, it is to be noted 4. That all turbid or impossible conditions render vows null. . n. 165. Note 2. That a vow is obligated not merely by the condition being fulfilled equivalently, but specifically must be fulfilled, for example: if you vowed to enter a religious order, it is insufficient that your sister dies; rather, she must marry. . n. 169. « 42.

He who vowed a certain and definite thing, for example, this cup, "if that thing perishes, he is not bound to give another, since it does not usually signify such; but if he has sold that thing, it seems more probable that he be held to give the money which he received, because he who vows a thing is deemed to promise all its utility." 220. — "43. He who has vowed to do something at a certain time, for example, to fast on this or that day after another has passed, whether with fault or without fault, is not bound thereby, and neither is he bound if he foresaw an impediment about to occur at that time, which he was not obligated to anticipate, since such was not the intention of the one making the vow. . Book 4. See But the same rule which we mentioned above in no. 212 runs here from common article with 17. c. 1. p. 5. n. 130.

For to no purpose you are bound, if the day has passed, when a day is assigned for fulfilling an obligation, as must be reckoned in personal vows, unless it be otherwise established, as commonly Croix says in book 3, page 1, note 450, with Soto, point 4, section 2, and with him, point 5, note 434, and with others, as stated above. Whether, however, in a doubt, is the day appositely added for terminating an obligation, or for soliciting and executing the vow for days passed by? He denies it in treatise 5, rubric 26, because, as he says, vows in doubt do not bind strictly when interpreted strictly, according to the common rule handed down by the Doctors with Cajetan on the second part, question 2, note 409 and note 432, and by St. Thomas, namely, because when the vow is certain and only the circumstance excusing is in doubt, possession counts as a vow.

But this reasoning does not convince; for it could be replied that here there is a doubt concerning a circumstance which affects the substance of the vow, and thus the vow itself would become doubtful according to what is stated in n. 498. Hence it seems to me more correct to distinguish and say that in personal vows in doubt one is not bound to fulfill according to days passed; but otherwise in real vows. Reason, because from one side a firm rule is established, that possession stands for what presumption would establish, as the common Decrees with Busembaum teach in lib. 1, n. 26.

Cross l. 1. n. 509. Sanchez, Decretales, librum 1., capitulum 40., nota 13., cum Soto. Mol.

Arag. et Menoch. From another side, it is commonly held that, unless the contrary be established, as has been noted above, in real vows days are presumed to be added only for the purpose of soliciting the obligation, according to 1. n. 434. cum . Prado and Croix, l. 3, p. 1, n. 450, cum. gr., in that year you received grace, as . 47, c. 1, p. 5, n. 129, cum aliis.

Otherwise, if the day had no connection with the vow, namely, if you had wished to give alms on the sabbaths throughout the year without any special reason for that particular year, as he rightly says at the end. In votis contra personalibus presupposes a day apposed to fulfill the obligation, as they say in § 2 n. 115 p. 4 and Croix loc. cit. with others as above cited. Hence in real vows, since the presumption is for the vow, it is also for the possession itself; and therefore it must also be fulfilled even for the days that have passed.

On the other hand, it is to be said concerning personal vows, in which presumption is against the vow, and thus 224. — « 14. He who has vowed something without a certain time, for example, pilgrimage, is bound only to fulfill it when he first can conveniently do so: because thereby each one is considered morally to understand his promise such that the convenience not be too long delayed, although a lesser cause suffices to delay than to omit. Q. 10. etc. An indeterminate vow as regards time, for example, daily rosary, fasting on Saturdays, obligates perpetually unless otherwise can be gathered from circumstances. . 47. c. 4. punct. 6. §. 1. n. 140. communiter. If, however, there is a doubt whether it was intended for a year or a month; you are not bound, unless at least. . n. 146. with . de Censib.

It is asked whether one who makes a vow for an indeterminate time commits a mortal sin if he delays fulfilling it for a long time? It is certain that if the vow be perpetual obedience to God, such as entering a religious order, serving as an innkeeper, and similar matters, he who delays long in fulfilling it sins lethally, provided there be opportunity to fulfill it, and no reasonable excuse exists. They say however Armill.

Rodrigo. and from the state of religion tractatus 15. caput 2. punctuatio 3. nota 32. differ to defer a vow of religion by two or three years not being mortal; but this opinion seems rightly lax to others, as Sporer in the second precept note 117. December 1, chapter 4, number 14, note 22. Others, speaking generally, say that it is mortal to defer for six months, and they adhere to this with .

Sporer consents as well, if one who has made a vow exceeds the age of

forty years; yet he thinks otherwise: because (as they say), this time seems to be but trifling in comparison with the whole service of life: but to this I absolutely do not agree unless there be a just cause for delay. The just causes for differing are, if the one who makes a vow hopes that through this delay his parents may be benefited financially. Item, si obstet gravissima necessitas spiritualis aut corporalis sororum vel fratrum.

Thus Croix l. 3. p. 4. n. 446. with 2. p. 5. n. 3. with dict. l. 4. c. 44. n. 5. and 6. and c. 2. n. 30. with . Pell. However, Sporer and others well observe at the end, in these cases one must be careful to avoid excessive delay or for there to be a risk of a vow never being fulfilled; this risk is not uncommon in vows of religion, for whose fulfillment countless demons incite divisions and impediments. If however the vow be temporal in observance, namely of so many fasts, pilgrimages, etc., it is deemed probable. praec. n. 416. cum .

And it is favorable to 4. c. 44. n. 24., referring to St. Augustine, who says that such a delay is mortal when there is a postponement for long periods of time, and from this very delay arises the danger of forgetfulness or inability to fulfill. But more correctly it should be said that to mortal sin he offends who deferres notably the fulfillment of a vow without just cause, namely beyond two or three years; as rightly they sense Croix l. 3. p. 4. 446. et loc. cit. n. 32. cum et Garcia. Croix with Diana thinks, that if you vowed to confess each month, you could delay this confession by two or three days beyond a month for just cause. 222. — • 15.

He who has vowed something without a certain place, for instance, one who intends to enter the Order of St. Benedict, satisfies his vow by entering any monastery of that order in which the substantial provisions of the rule are observed. Neither is it held as an admission to traverse the province, but it suffices to visit certain places not too remote. And the vow is satisfied if, after having entered, he be dismissed or allowed to leave (at least for just cause, such as when, for instance).

Severe sorrow and anxiety, whether arising from its own nature or from elsewhere: Escob. ex l. 4. c. 16. n. 100.) before profession. See Trullan. l. 2. c. 2. d. 20. n. 7. et 8. » (And see book 5, no. 72.) 16.

He who has vowed something without a certain quality, for example, that he will enter religion in general, can enter any [religion], even laxer ones, provided that the essentials are observed and it is approved. Similarly, si quis voverit triticum, etc., non tenetur dare optimum quod habet, sed satis est (loquendo de obligatione praecise) ut det quod non sit plane ineptum. The same [is stated] in chapter 47, point 6, section 4, note 140, with

[reference to]. 17.

He who has vowed himself to give something without a certain quantity, for example. "alms, money, corn, etc., satisfy by giving whatever quantity one has willed." DD.) "modo non det tam parum, ut videatur potius ridere suum votum quam implere."

The reason for all of these is sought in the intention of the one who makes the vow, by which no one is considered bound, except to what he can conveniently give and generally deems fitting. . l. 4. c. 43. « 18. In dubio de mente voventis debet fieri interpretatio secundum proprietatem verborum, quibus usus est, vel potius communem et usitatam acceptiorem. c. 2. From note 134. 223. — 19.

Whoever has made a vow, if he plays with charters, and promises himself to be subject to ten imperious commands, is bound according to . It seems, however, that this denies it. Fourth treatise, fourth chapter, fifth note, number four. See Tenth Topic, Rule 60.

They distinguish well. §. 7. n. 477. If the vow was simple concerning the payment of a penalty and he has transgressed; then it suffices to pay the penalty once, since It is sufficiently probable: they fly . Otherwise, if the vow be double, namely, not to play and to make reparation for the penalty: then, whenever he transgresses the vow, reparation must be made for the penalty; unless this be a very grave matter, such as exile, bestowal of great alms, which are not commonly repeated.

Thus. As. True when. See n. 475 and 477.224 — Many things in the end here are to be noted together, and I that vows are always to be interpreted according to the more benign part. §3. n. 148 cum et others commonly.

II. Notandum quòd fractio votorum sit ejusdem speciei: linc, si quis habens votum castitatis fornicetur, potest seorsim fractionem voti confiteri. But what if someone vows a fast for a special reason of temperance? Val. ibid. n. 402. probabiliter tenent eum committere duo peccata jejunium frangendo.

Tantum etiam conjugem voventem castitatem ex motivo amoris erga castitatem, si petat debitum, dicunt committere duo peccata. But it is more probable to hold as stated in n. 403 and by Cajetan and Pradus, that one mortal sin is committed against a vow, because by the vow they impose on themselves an obligation of fidelity towards God, not another. Note III. That if anyone vow to disjoin a good thing, or an evil thing, or a vain

thing, or an imperfect thing, such a vow is no vow at all. . punct. 6. §. 4. n. 444.

If however both parts are suitable material, that which is chosen ought to be supplied, even though after the choice one part may perish or become impossible. On the contrary, if one part perishes or is rendered impossible before the election, you are not bound to the other part unless your own fault causes its perishing, or you were delayed in delivering or determining it. Thus also 442. cum.

Moral. etc. Here it is inquired whether one can vow to exchange a part already elected with another? They probably deny that one can change one already chosen part of a vow with another part according to c. 3, punct. 42, n. 407. Wherefore, if one part that has been elected concerns something reserved, such as chastity, etc., a papal dispensation is required.

They nevertheless affirm, Leand. and Ratio, that despite the fact that a choice has been made, the vow remains disjunctive, and by the act of determination he does not deprive himself of liberty to choose another part. He who vows that he will hear the sacred Word for a month is probably not bound to have it heard twice on feast days. Just as this is also probable if it is imposed by the confessor for penance. . 47.c. 1. punct. 6. §. 1. n. 436. cum . . c. 2. n. 96. ac Croix de penit. n. 284.

Whoever vows to recite the Rosary is satisfied by reciting one-third of it, because this is commonly understood thus. . n. 436. cum . . in fin. cum . And likewise he satisfies himself by dividing decades, loc. cit. in fin. cum Qui vovet jejunium se observaturum, potest comedere lacticinia, ut . n. 437. cum . If one vows to fast per mensem, he is not bound on Sunday; or if one vows to fast in the vigil of some saint that falls on Sunday, he may anticipate the fast to Saturday, . cum Bonac.

If one having vowed abstinence from meat eats flesh, he is not bound to fast: in distinction from the fast commanded by the Church, which imposes twofold precept, both fasting and abstinence from flesh, according to . vide 1. 5. n. 992. If one has vowed jejunium on each sabbath, is he bound by his vow if Christmas falls on a sabbath? They probably deny it.

Azor, ibid., n. 438, et Bonaventura probantem vocant, in tom. 2, disp. 4, q. 2, p. 6, n. 9 et n. 43: nisi expressé intenderit adhuc eo die se velle obligare; quia tunc procul-dubio tenetur. They nevertheless affirm, n. 439: "If anyone forgetful of a vow or penance imposed, etc., perform the required work, he sufficiently satisfies his general will, which is considered by each

to have satisfied prior obligations," as Sporer treats in tract. 4, de canse, n. 50; 4, c. 14, n. 45; 2, c. 37, num. 41; 4, tract. 2, c. 41, n. 9. If anyone is certain about his vow, but has a probable reason that he has already satisfied it, many authorities say that the one who vowed is not bound to anything.

But to this opinion we have already said in the treatise on consent that it is not to be adhered to, because the obligation of a certain vow is not fulfilled even by probable satisfaction (4). (1) See the note at 1. 1. n. 29. placed and also in this book n. 760. Quaer. II, at the end.

Digitized by DOUBT V. In how many ways is the obligation of a vow removed? It is removed in one way: 1. By reason of a change in matter. 2.

By human authority. See resolutions. 14 Whether there exists an obligation to fulfill a vow if a non-previous circumstance supervenes? What, however, about simple vows of chastity and religion, and what about solemn ones?

See I. 2. n. 10. 225.— Resp. It can be withdrawn in two ways, 4. Without any authority intervening: this may occur either through a change in matter; thus, if matter that was previously honorable becomes disgraceful, indifferent, or obstructive to a greater good, by reason of new circumstances, or prohibition, or it is made absolutely or morally impossible, or the condition from which it depended ceases.

With intervention of human authority: this in three ways, namely, by way of prohibition, by way of commutation, or by way of dispensation, concerning which see the appropriate discussions elsewhere. It is common, Suav. 1. 4. c. 24. 2. c. 24. Suav. c. 8.

Whereupon you resolve: • 4. It is such a fault made that it is impossible, useless, etc., yet after it has already been thus made, obligation arises, and it suffices to penetrate regarding the fault. • 2. Si concurrat obligatio duorum votorum incompossibilium, implendum est id quod est praestantiae et Deo gratius, et alterum cessat.

Quod si vero sit aequale, aut nescias, quid sit melius, implendum est quod prius vovisti, et ruit posterius; si et hoc nescis, libera est electio. See. 2. c. 2. d. 9. • 3. If the matter of the vow becomes impossible as regards only a part thereof, then, if such a matter of vow cannot be divided conveniently or does not usually so happen, it amounts to nothing rashly: word of grace, you vowed yourself to build a temple; if you are unable to do the whole,

you are not bound to the part. • 4.

If, however, it can be conveniently divided and usually does so, the obligation remains for that part which can be fulfilled, e.g., 4. He who is unable to fast the whole week, but can do so on certain days, is bound to that which he can fulfill. He who has contracted and consummated a marriage after having made a vow of chastity is bound not to seek debt: since the vow is still possible (for he must make reparation). See § 4. • 5.

Now if a vow can indeed be divided, but in it there is one principal and the rest accessory only, not intended by themselves separately, but depending on it as its appendages and modes; then, if the principal becomes impossible, the obligation of the accessories also collapses, not otherwise: for example, you vowed a pilgrimage to Rome in sackcloth and to offer something there; if the pilgrimage becomes impossible, you are neither bound to bear the sackcloth nor to send the offering. See § 4. o 40. Bonaventurae - doctoris tertii - capitis secundi - partis quartae - sectionis quartae. Capitulum duo. Distinctio prima. Decretum decimum.

226. — Here it is asked whether there is an obligation to fulfill a vow if a notable circumstance supervenes which, having been foreseen beforehand, would have prevented one from making such a vow? It is a common opinion among c. 3. punct. 2. n. 19 and 20. when . v. But the doubt is, that in every promise, as indeed also in a vow, a notable change in matter removes the obligation by itself.

Reason, because by mutation the thing becomes different from that which is promised. But what if a new circumstance should occur that was not foreseen? Suppose someone had vowed to fast on all sextuple feasts; would he be bound to fasting on Christmas Day, which he had excluded, had he anticipated this day? They affirm, according to precedent point 5, section 2, number 104, with high authority and chapter 4, paragraph 14, number 64 (But it should be noted that Sanchez is speaking here about a precise case of fasting, because he considers the circumstance of the feast not to produce a notable mutation: whereas regarding our inquiry he holds the opposite opinion, as will be shown below). Reasoning, as they say, because in order to excuse from the obligation of a vow the one who has vowed, it is not necessary to consider what he himself would have promised if he had remembered, but rather what he actually promised.

And they prove from c. Explicari, concerning the observance of fasting, where Honorius III said: He who is neither bound by vow nor by regular observance; in a seat of rest on a Friday, if Christmas Day happens to come upon that day; for reasons of the festivity's excellence, they are allowed to

eat flesh according to the custom of the general Church. They deny, however, being bound by a vow Azor 1. p. l. 14. c. 20. q. 3. likewise Payund. Dian: and similarly regarding the precedent number 403, speaking about the aforementioned case of fasting (of which see also mentioned note 224 near the end); and speaking generally about every new notable circumstance supervening, St. Anton. holds in treatise as above concerning juramentum chapter 3, point 2, note 24.

And this opinion he explicitly holds in dist. 38, q. 1, art. 3, ad 4, where he teaches thus: To release from the obligation of a vow or a promise, that which if known from the beginning would have prevented it from being made. Reason, because then the intention to bind oneself or to cease binding oneself, or thus it is interpreted. And to this judgment they say n. 22: that competency cannot be denied; on the contrary itself c. 1, punct. 6, § 3, n. 152, hold that it is a notable change, which if from the beginning had been known, no one would have failed to obligate himself.

This second opinion seems to me no less probable, nay perhaps more probable than the first. General reason, because, upon the supervening circumstance not having been foreseen, the vow becomes more severe, and the matter of the vow is made different from what was promised. And thus it responds to the opposite reason, because he who makes a vow is bound to more than he promised.

It is responded to according to the definition of Honorius III as stated above, namely that the Pontiff does not explain whether the circumstance of the day of the Nativity of the Lord was or was not foreseen; hence the text can be explained (as Azorius understands it in loco citato) concerning those who have expressly vowed to observe fasts even on the day of Nativity. C., quo casu certè tenéntur ad votum, ut diximus supra 224 circa fin. 1 1 1 1 1 1 1 1 1 1 27: quis possit vota irritare? An liceat irritare vota sine causa? Quae vota filiorum possint irritare pater, avus, tutor, etc.? Quas possit irritare mater? An vota subditorum valeant, donec irritentur? Quid, si quis per errorem estimabatur pater, maritus, etc.? Qui possit irritare vota religiosorum et moralium? An abbacy? 1. 34 An ibi possit irritare omnia vota uxoris? 1. 35 Quae pater vota viri? 1. 36 Quid, si multuo consensu voreant castitatem? 1. 37 An superior possit irritare vota facta ante subjectionem?

What if a gift were given, whether it be before or after subjection? 1. 38 But can vows made during the time of subjection be irritated afterwards? 1. 39 What if the superior should have ratified them? 1. 40 Which vows of servants or slaves can be irritated by the lord? 1. 50 1. 51 227. — Resp. Since it should not be violated anyone's dominion, and each lord can use

his own liberty, hence, if the will of some person is subject to another's authority, that subject may validly, directly, without any cause at all, annul all vows, whatever they may be, according to his own pleasure; he can will it and proclaim that those vows are null, so that no obligation from them ever revives again (even though they sin if they annul without cause, as is taught in 2. c. 40. p. 75). Moreover, this right proceeds from positive law by which legitimate dominion over another's will is given to someone. Thus commonly the Decretals say it. See . 4. c. 24. n. 30. et 81.

But it also proceeds from natural law, as . 47. c. 3. conj. 3. n. 27. with S. Thom. 2-2, q. 185, art. 5. 228. — It is asked, whether vows may be invalidated without cause? It is certain according to 1. 64 that no cause is required for the irritation of vows: and it is common opinion, as stated in n. 29 and in 2. c. 40 n. 69, that this does not constitute a mortal sin, which appears certain when viewed with Palud. Sylv. et Ang.

It is doubtful whether it is venial. The first opinion affirms with Bus. But it is more true to speak of oneself as if there were no sin, because vows made by subordinates under this condition are sent forth with the consent of superiors, whence obedience suffices as a cause.

Thus, no. 30. with St. Azor, loc. cit. no. 70. However, any rational cause suffices to excuse from a venial sin, as . 254 and others state. And the same is held previously n. 34. with Sot.

It is sufficient any rational cause to excuse from a venial sin, as . 254. and others. And the same holds . preceding n. 34. with Sot. Val. Mediocris, etc., communiter putat non peccare graviter superiorem, qui dederit permissivè licentiam et postea revocaverit: imo probabile putat, ne veniale quidem esse, nisi promiserit se non revocaturum. The irritation of all vows in general is valid, even those future ones and even those from a subject who repudiates them. n. 35. cum. ## Whereupon you resolve: 229. — • 4.

Any father, and in his absence the paternal grandfather, guardian, or even the mother—nay, according to some, also the teacher or foster-brother—both if she be a stepmother and in the defect of the aforementioned, and according to certain authorities, even in the absence of all the aforementioned, may not only permit but also command gravely. Woman, caus. 32. q. 2. etc. 1. and 2. c. 20. q. 1. et c. If anyone from the king. Impubertas autem secundum jura finitur in masculis anno quarto decimo completo: in feminis duodecimo completo, à die nativitatis computando, ut tom. 4. c. 7. n. 10.

Bonac. tr. 4. disp. 4. q. 2. p. 6. §. 2. Each thing more clearly explained. Father, or paternal grandfather, in his de facto position, can irritate any vows of the immature, whether personal or real, as long as they pertain to chastity and religion, even if the son is capable of deceit, and even if the vow concerns camp property, or quasi-camp property, as stated on page 5, note 45, according to St. Thomas 2-2, q. 88, art. 9, with Cajetan and Sánchez, . . c. 20 and following.

And the reason is, as it is said in c. 18 n. 5, because in such an age there is a lack of perfect deliberation for such a great obligation; which defect nature foresaw by providing parents with the capacity to annul such vows. In dubio autem, an votum sit emissum ante vel post pubertatem, adhuc potest pater id irritare, quia praevalet ejus potestas. Thus it is with regard to . 254.

He who rightly says that in doubt whether the son has ratified a vow after puberty, the father can still annul it, since his power prevails. Parents cannot irritate the personal vows of minor children, such as those of chastity, frequentation of sacraments, etc., unless they prejudice domestic governance; thus, if the vow is incompatible with the mode of family life, such as long abstinence, pilgrimage, or fasting that is incompatible with the manner of household living, etc. Thus, n. 46. with S. Th. and Sylo. and n. 47. with S., etc. Excipe, if the vow concerns military funds, or quasi (1); or if the son has exited paternal authority. Thus, n. 48. Item, vow to go to Rome for the absolution of excommunication, ex c. Relatum, de sent. excomm.

The faculty which the father has towards legitimate sons, he has the same towards illegitimate ones, as stated in canon 4, chapter 35, number 82. And it is common according to number 53 in the middle. Therefore, what has been said about the father with regard to legitimate sons, may also be said concerning the tutor with regard to the ward, and concerning the curator with regard to the minor. And si sint plures tutores vel curatores quilibet eamdem potestatem habet. Whether or not the mother can irritate the vows of the children is a question.

If the mother is designated as tutrix or curatrix, certainly she can do what tutors and others can, as stated above. But what if she is not designated as such, and the son cares for him either by his father or paternal grandfather? They think then that the son is sui juris; but they consider it more probable that in that case the mother should be curator, which they hold to be more reasonable. Leand., quia rationabile est, ut mater vel avia minori provideat; et ideo bene potest eorum vota ut curatrix irritare.

But there is more doubt whether the mother, being present with the father or the tutor, can advocate for the children's wishes? The double sentiment is probable. The first opinion denies this, and states that the mother can irritate the vows of minors only when the father and tutor are absent; similarly, in the absence of both the mother and the maternal grandmother, the grandfather on the maternal side can do the same.

Thus ... num. 54. The second is no less probable, as they rightly assert in n. 52., (than what Prad. and q. 3. r. 3. hold.) It asserts that even when the mother is present with the father or tutor, she can irritate the vows of all the immature, including those of chastity and religion; and also the personal vows of adults which prejudice the management of the household: not however real things whose administration pertains to the father or curator. Reason, because such power, although not civilly, yet naturally as well is in the mother to whom children are bound to obey, even though with subordination to the father; so that the father may irritate the vows of his children, contradicting the mother: but not thus the mother, contradicting the father; and this is proven from S. c. 13, art. 10, which grants undistinctively to parents the faculty of irritating the vows of their children. 231. — Furthermore it is asked whether the vows of the children and other subordinates, such as religious persons, wives, etc., as will be discussed below, until they are irritated, are valid in those things that do not prejudice the commands of superiors or jurisdiction?

The first proposition denies this, and therefore says that such relaxation is not needed if they are issued without the consent of the superiors; because such subjects lack the use of will, over which the superiors have dominion. Thus Val. Angel. and others; and they call it probable Leand.

Torres. and on vows. tractatus 47. caput 4. punctum 7. nota 182. And they say that St. Thomas replies in 2. 2. q. 88. art. 8. ad 3, where he says: No religious vow is firm unless it be with the consent of the prelate. And the same is said of the wife's vow, etc. Nevertheless, they say that the second opinion is more probable and ought absolutely to be held. n. 483. with Caj... Fill.

Azor, et altis pluribus, afferret validas esse talia vota, sive realia sint, sive personalia, nisi irritentur; quia subditi reverè non carent voluntatem, sed illam subjiciendum habent voluntati superiorum, si contradicant. And thus is to be understood St. Thomas, who in the cited place teaches nothing else than that such a vow is firm; because, as he says in his response to 4 and 4. In their vow is understood the due condition, if their superiors approve it or do not object to it.

Wherefore it suffices that their consent is not withdrawn, so that the condition of the vow be fulfilled and the vow remain firm. 232. — Here it is asked whether, if through a common error one were considered to hold the title of prelate, husband, father, etc., the irruption of vows made by them would be valid, just as acts of jurisdiction are valid ex l. Barbarius, ff. de Bon. et alii apud . cit. c. 3. punct. 8. n. 74., quia differre actus dominii ab actu jurisdictionis. However, they deem it probable otherwise, citing Prado, because in these matters the same reasoning applies: "2."

"Religious vows" (namely, even internal ones, as . punct. 4. n. 37. with Sot. has transferred to the whole prelate his will to will and not-will) "are nonetheless not known by novices," (although personal vows of novices may be suspended). See note 42.) They can also be directly irritable even by predecessors; excepting the Pope (The Pope indeed has the power to directly irritate the vows of religious; and a bishop subject to him over nuns. See note 33.) Abbots, guardians, priors, and rectors (even secondary prelates in the absence of the primary ones. See note 40.) And probably also abbesses (When . see note 41.) as it has been stated . chapter 6, canon 7, number 49. Regis. l. 84. n. 242.

However, the vow of transferring to a stricter religious order is excused. See Binsfeld. 3. p. . 4. c. 33. n. 43. Bon. l. 4.

"This vow neither the Pope can invalidate. Num. 38." 34. — “3. The same is permissible according to cap. 9 of de matr., dec. 39: with respect to the vows of his wife, a husband can do this; although others limit it probablier to those vows which prejudice the right of the husband. c. 8, Question 8, cap. 49, n. 83 and dec. 15. » But it seems more probable, at least extrinsically, that the contrary opinion is correct, namely, that a wife can directly invalidate all her vows, even though they do not prejudice the use of marriage, or the education of offspring, or domestic governance (as only concede the opposite doctors in 47. c. 3. punct. 6. n. 57.). And it is especially confirmed by verses 7 and 9 where it is said: If she has had a husband and he made some vow... (if the man)... hearing this immediately contradicted and invalidated his promises... the Lord will be propitious to him.

Which is interpreted by 70 interpreters not solely from the vow of abstinence but from every vow: and thus S. Ambrose says at n. 58: It is most evident that man is the head of woman, so that no vows, whether of abstinence or religious conversation, may lawfully be offered to God by her without his permission. Likewise S. Thom. 2. 2. Question 88. art. 8. ad. 3. teaches that a wife's vow is null without the consent of the husband just as a religious vow is null without the consent of the prelate: No religious

vow (according to S. Thomas) is firm unless it be by the consent of the prelate, just as neither a maiden's vow while living in her father's house is valid unless it be by the consent of the father: nor a wife's vow unless it be by the consent of the husband. And the reason is that it greatly facilitates peace in the family and fosters abundant love, when the wife has a total willingness dependent upon the husband, and thus the impulses of women are restrained.

Thus it is stated in lib. 9, dist. 39, num. 4, with Soto, Sa, and Salmeron, cited in note 58. Villal. . n. 27. cum . ibid. Hence a man can also provoke the vows of chastity and the observance of religious duties to be performed for his wife after his death. . n. 59. cum Sot.

Arag. Leand. c. n. 16. et disp. 40. n. 17. cum Sot. et Vega, contra 235. — E converso notandum I., quod uxor nequeat irritare vota viri nisi praejudicent, ut votum longae peregrinationis, magnae abstinentiae, vestiendi se habitu eremite, et similia . 2. Item.

And likewise the vow of not seeking a debt, as Sporer holds in loc. cit. n. 28. cum . Henry [here] no. 56, because it would be very grievous to the wife's modesty to be always compelled to ask for what is not due. Such vows teach commonly that they are to be irritated: but rather they seem to be invalid, as being made of an incompetent matter, as those say n. 55. 236. — Notandum II. namely, that if spouses mutually consent to vow chastity or religion, their vows cannot irritate each other; because both virtually yield to their own right.

It is common; thus the Salmanticenses ibid. n. 59. with Sanchez, Suarez, etc., and v. 7. v. What now, or what next? These spouses, if after such a vow, revoked by mutual consent, cohabit again, although they do not commit themselves against chastity, nevertheless sin against the vow unless they be excused from it by some gravest cause. . cit. in fin. cum . « 4.

Whoever has once incurred a vow is not thereby restored to his former state if afterwards he does not wish to fulfill it; this is what S. Augustine says. Irritation of the vow. » (Sc. 47. c. 3. punct. 8. n. 70. cum Soto, contra aliquos.) 237. — « 5.

No one of those aforementioned can directly irritate emitted vows before subjection, for example, before marriage: whereas, however, those made within the time of subjection, concerning matters to be fulfilled after the time of subjection, such as in puberty or after the death of a husband, can

irritate. Bonac. l. cited. (Cum n. 74. etc., ac l. 9. d. 39. n. 46. cum) Non potest vir directè irritare vota, ab uxore emissa ante matrimo- num, sed bene potest illorum suspendere executionem, quatenus praëjudicant suae potestati. . n. 75. cum . . 253. et . « 6.

Vow concerning which there is doubt, whether it was emitted at that time out of liberty or subjection, cannot be displeasing to the superior, teaches Satan, 4. 2. Quaestio 21 et Caramuelis Libri tertii capitulum quarto distinctio quarta. But the contrary is held to be true. 6. c. 4. §. 28.

Therefore, it is asked whether a man or a prelate can directly irritate the wife concerning the vows of a religious, about which there is doubt, namely, whether they were made before or after subjection? They affirm, as stated in 4. c. 32. n. 7., according to what was said above: The reason is because, as he says, the possession of the present will is certain when it is certain that she is wife or he is religious; but the exception regarding those vows is doubtful; hence, until the exception be proven, namely, that the vows were made before subjection, the superior's certain possession prevails. As a wife in doubt concerning the value of her marriage is bound to render debt to another petitioner on account of her certain possession, as stated in c. Dominus, de secunda nuptiarum.

Thus. I do not doubt (as I said in note 229), that a father can invalidate the vows of his son when there is doubt whether the son has reached puberty or not at the time of pubertate, because in such a case possession stands for the protest of the father, as stated in note 229. Inversum vero dico tenendum hic, cum vota sint certa, et possessio viri vel prælati sit dubia, eò quod dubitatur, an vota sint vel non emissa tempore quo jam inceperit subjectio.

The parity of the claimant's spouse differs; for there he has a certain possession over the entire body of the conjugal partner who doubts, and from this possession he has a certain right to use it. Otherwise is it different in our case, wherein the husband or prelate does not have a total possession over the will of the wife or religious. He indeed has possession over the present will of the subject, but he does not have possession over the past.

And therefore the aforementioned cannot be directly provoked regarding the vows about which there is doubt whether they pertain to their proper subjects. However, they can indirectly, according to what is said in art. seq. n. 241. 238. — « 7. Vota, facta tempore subjectionis, possunt adhuc irritari post illud, id est, quando filius jam est pubes.

That which is true, even though it might have been ratified in "puberty," thinking it to be firm from error: otherwise, if it had known it to be weak and independently ratified apart from the prior ones, according to 2. c. 40. dub. 40. And this is more probable, namely, that vows made during the time of subjection can still be annulled by the father after that; as they hold against others . 47. c. 3. punct. 8. n. 73. cum . etc. provided that the son does not confirm the vow in puberty; and, as Bus. adds more proba-bly cum . However, the father cannot irritate genuine vows of the mature, after they have been emancipated.

Neither the prelate can irritate the vows of a religious, if he is no longer subject to him; nor can a man irritate the vows of his wife, after formal divorce has been made. See note 72. 239. — "8." The aforementioned can revoke and directly irritate vows, even though they may have ratified them once, because they did not deprive themselves of dominion, and potency suavis.

See 6. c. 6.; si tamen hoc sine causa fiat, erit secundum quosdam peccatum mortale, licet probabilius id negent et. » That superiors can validly irritate the vows of subordinates, even though those vows have been ratified, seems certain, because themselves, even if they wish it, cannot deprive themselves of the dominative power which they hold over subordinates. Ita communiter 4. c. 27. n. 9. . 259. et num. 66. cum Cajet. Sayr. Et hoc valet non tantum pro patre respectu filii, et prælato respectu religiosi: sed etiam pro viro respectu uxoris, ut valdè probabiliter tenent l. 9. d. 40. n. 47. cum Sot. et Vega, item 3. c. 46. §. 3. n. 48. et c. ex n. 64. cum aliis cit. (contra 259. et Sporer de 2. praec. c. 3. n. 32. etc.). Ratio, quia vir habet veram potestatem directam irritandi vota uxoris, etiam castitatis, et religionis, ut dictum est n. 234.

It is certain that all the aforementioned superiors, if they without just cause irritate the vows of subordinates after positively approving them, will sin both themselves and those subordinates who petition for relaxation. (I said, if they have positively approved them; for it would be otherwise if they merely allowed subordinates to make vows or fulfill a vow-promised obligation, as stated in n. 69 with .) But there is doubt whether by irritating they would sin gravely or lightly? There is a double probable opinion. The first assertion states that they would gravely sin according to 46, where concerning the husband who consents to his wife's vow and subsequently irritates her, it is said: He himself will suffer the iniquity of it.

Reason, because, given his own consent, the vow is bound not to impede.

Thus, n. 68, with Cajet., etc. Nevertheless, the second opinion, perhaps more probable, asserts that they would have sinned lightly, secluded by scandal or contempt, because the superior makes use of his own right, and by irritating the vow he is not the cause of its violation, since the subject himself does not then violate the vow at that time. Thus according to Busemb. herehold they maintain 6. c. 4, §. 2. n. 29.

Soto de justitia libri septimi, quaestio tertia, articulus quartus: n. 67. The same is held by Sporer in the aforementioned location, note 34, with Val. Medium et communiori.

However, the same Sporer n. 32. and . 2. c. 40. n. 95. and . 258. with ; hence neither could it easily provoke anger, nor, if it did provoke, would it gravely sin. But these AA speak according to their own opinion, namely, that a man can only indirectly provoke the wishes of his wife through power. They say that in this respect the prelate differs from the husband with regard to his wife, because although the prelate, who has direct power to irritate, cannot renounce his right; yet the husband, who has power only indirectly, can.

But according to the aforementioned judgment referred to in n. 234, we say with St. Thomas that the same dominant power which the prelate has over the religious, the husband also has over the wife; hence, just as the prelate cannot deprive himself of that power, so neither can the husband with respect to his wife. Hence it seems sufficiently probable according to what has been said above, c. n. 53, that a husband, without causing an irritation of his wife's vow of chastity, even after positively approving it, does not sin more than venially. What, however, if husband and wife mutually consent to vow chastity?

Certainly in such a case he remains obstructed by his own vow, which nevertheless cannot be irritated by the wife. Thus also it is said in no. 20., cap. 40: "neither can a wife's vow irk her husband," and this is followed by c. 3., lib. 47, punct. 6, n. 59, and others of the same kind. I, however, do not find a certain reason why I could condemn the Palace and others according to chapter number 49 which contradict; for if the husband (as he himself allows), so too should I refer it to the wise ones to decide.

A prelate can irritate the vow of subjects confirmed by a predecessor either equal or inferior in rank, but not by one superior. Consider these matters » (And this is both valid and lawful, Taqnb., etc.) 240. — If we speak of mancipes, the lord can irritate any of their real vows, unless they have some of their own; and he can also irritate personal vows that prejudice the lord, such as those of religion, long pilgrimage, etc. Not however,

chastity, or moderate prayer, or fasting, etc., thus punct. 8. n. 62. and 63. with others. The vows of servants cannot be annulled by heresies, but only suspended for a time during their servitude, so far as they prejudice due obedience. . n. 75. in fin. cum .

Good. ARTICLE II. Who indirectly can provoke vows? 241. — Resp.

If it is not indeed the will of the one making the vow, but rather the matter of the vow that is subject to this law, so that insofar as its own right is prejudiced does it have this right, such a vow can be indirectly annulled, namely by suspending its obligation; and this is according to the law of nature, teaching that no one can promise another something to the prejudice of a third party. St. Thomas in the Fourth Question, Thirty-Eighth Article. Whereupon the resolution is: 242. — 4. Thus they can be rendered invalid, besides those mentioned above, the father with respect to his pubescent children, so long as they remain in the paternal home and are not emancipated: likewise the tutor until the twenty-fifth year; in matters which fall under their authority and power.

"(See what was said in no. 229.) 2." Item potest uxor respectu mariti, v.g., si is voverit longiorem peregrinationem, habitare alibi, cubare seorsim, quæ derogant vitæ sociali et usui dominii, quod habet in corpus mariti. 3. Likewise the lord and lady with regard to their servants, for instance, if they have vowed a fast whereby they would become incompetent for the service of the master: which vow is neither of chastity nor of brief prayer. « 4.

Item non tantùm Pontifex respectu omnium fidelium, sed etiam Episcopi, et principes respectu subditorum, quando materia illis praejudicat. Finally, superiors with respect to novices in those things which impede the exercises of novitiate. . 43. n. 8. « 5. They cannot be indirectly irritated by vows concerning another precept, for instance.

"non furandi, quia nemini præjudicant." Translation: "not concerning theft, because they prejudice no one."

Neither vows are to be fulfilled then when the matter of the vow will no longer be subject: for example, the vows of a servant to be fulfilled when he will become free, and of a wife when her husband will be dead. » (But this is more probablistically denied of a man with regard to his wife's vows, as stated in n. 234.) « 6. One can also indirectly irritate vows made long ago before one was subject to their matter; for example, vows made by a spouse far in advance of marriage.

». Chapter 47, Book 3, Paragraph 8, Number 75, as stated above in Note 237. « 7. One can also indirectly irritate vows granted and confirmed by oneself or a predecessor, as is evident from the preceding article. Nevertheless, receive it, unless he had ceased from his own right, and had accepted this concession as a subject, for instance, in a mutual vow of chastity made by consent of husband and wife.

However, it would have been according to the law if either the wife alone, or both independently from each other, had made the vow. » (See above no. 239.) « 8. Vows indirectly merely irritated, revive and oblige when the other ceases to prejudice.

See concerning these matters (Vota autem directè semel irritata numquam reviviscunt, ut 266 cum et Fill.) ## DUBIUM VII. ### What is the commutation of a vow? When can vows be commuted? Can one commute his own vow into an equal work? Is it permissible to commute into less without just cause? See other notable points. Can he who has the faculty commute into somewhat less? After having made a commutation, does the vow-maker fulfill his vow through the first promise? If a commutation of the impossible is made, is the vow-maker bound to fulfill the first vow? Whether he who performs the promised work forgetful of the vow is thereby released from the vow? — « RESP. Communatio est substitutio alterius operis honesti loco ejus, quod voto promissum erat, sub eadem obligatione.

Concerning that which, in order to be licitly commuted, these rules are handed down: "First, for the commutation of a vow, there is required ecclesiastical authority:" 4. When a commutation is made for something slightly less good: since, if it is notably less good, it will be called a dispensation. 2. When there is doubt regarding the equality of the good.

When a change occurs to an equal good: it is permissible then to apply one's own increased authority; yet this alone suffices for a better commutation, because in a better [good] there is less contained. » (Commonly held with the exception of vows, according to n. 432.) » I call however better that which is such in respect to the order of the spiritual utility of the vower and more pleasing to God. (cum . punct. 45. n. 142.

The tutor is a change in frequency of sacraments; [Bardi, loc. cit.] 244. — It is asked whether a vow can be changed by its own authority into an act evidently equivalent? There are two opinions present. The first opinion, which is more probable, denies it from St. Thomas in the Fourth Question

of the Third Eighteen of the Fortieth Distinction, who provides the reason: "For this kind of commutation is a certain contract, which cannot be completed without the consent of him who bears the place of God on earth, namely, the prelate."

Then because, supposing the promise, it will be more pleasing to God that he who promises may fulfill the promised thing to the faithful rather than another equivalent one. Thus it has been considered contrary in the 3rd chapter, note 9, at the end, and in the 4th book, chapter 5, note 28; yet it is revoked in the 4th book, chapter 49, notes 12 and 24, with Caj. . . ibid., point 14, note 134. Given this opinion, some say that such a commutation is a sin only of light magnitude, namely n. 135, because, as they say, it involves a slight infidelity in regard to a minor matter.

Wherefore, if the matter already given has been commuted, it is sufficient that he who makes the vow supply something additional. And the same is asserted, if the matter supplied has been a lesser promise. However, others feel that it is a grave sin, as .

Nevertheless, they hold the second opinion, which they deem sufficiently probable . n. 133. and maintain . 304. in Decretals, lib. 3, c. 46, §. 5, n. 14. with St. Thomas, that each one is permitted to commute his vow with an evidently equivalent work. Reason, because it is presumed that God equally accepts works as to their substantial equality, by reason of divine benignity, at least so that a more cheerful offering be made to Him; for under this supposed presumption, the reason of the promise, as above, ceases. The doctrine and reason adduced by St. Thomas must be understood in reference to a minor work; otherwise, even the commutation into something evidently better would not hold, which the common opinion does not doubt, even if it is made from disparate matter, as stated in n. 132.

Suarez, etiam primam sententiam DD. conveniunt quod si materia sit certè æqualis, et probabiliter aut dubitanter sit melior, tunc propria auctoritate rectè fit commutatio. Thus . 17. cap. 3. punct. 14. n. 134. at the end, as . ibid. punct. 16. n. 144. at the end. But notwithstanding these things, I think that one should not depart from the first proposition; for the reason adduced by St. Thomas presses very strongly.

That very reason concludes for the work of equity (4). "Second rule." For the commutation of a vow to an equivalent (votum in æquale), there is required a cause, although one less than that required for dispensation, because dispensation entirely frees from the obligation of the vow,

whereas commutation substitutes something else in its place. Wherefore, if it be made better, no cause is required; but if it be made equal with the authority of a superior, a greater inclination thereto suffices.

» (as n. 145 and 146 with 306 and . and Croix.) « If however there is doubt whether it is equal, notable moderation suffices in fulfilling. See . 2. cap. 40. » 245. — It is asked, whether, if a change be made for less without just cause, it is not only illicit but also invalid?

The first opinion, according to 4. cap. 52. n. 8., and n. 147. et n. 9., states that it is valid provided the deficiency be supplied, because if there were not a greater obligation towards men than to supply; much more towards God, with whom one acts more mildly. And this is in accordance with the second opinion, as mentioned above at n. 244. The second opinion, however, says that it is invalid, just as the teaching of St. Thomas in 2. 2. question 88, article 42, teaches that a dispensation without just cause is invalid.

Reason, because a prelate may not exceed the faculty which God has delegated to him, namely, to exchange only with a just cause. Thus, n. 148, with Mar., Th. 2. 2. q. 88. art. 42, ad 2, allowing one who promises to comply with the judgment of the commutator. Whereupon resolves: 246. — « 1. Although prayer is absolutely superior to fasting, it is not permissible to make this exchange on one's own authority, because here and now fasting can be more pleasing to God, as being more useful for the spiritual good of this person. . 16.

» (Asserting Sed to this, speaking generally, I do not acquiesce.) » 2. All personal vows can be changed by one's own authority: namely, into a vow of religion; in fact, by very right all real vows are thus transformed into profession. (Thus S. Th. according to 47 cap. 3 punct. 14 n. 429.) • 3. He who has a vow of religion cannot change that by his own authority into reception of the episcopate; first, because this does not elevate man to a perfection greater than religion, although it is greater than what religion presupposes: secondly, because it does not necessarily follow that this be now and henceforth pleasing to God: thirdly, because thus Innocent III responded.

Bonaventura in secundum praeceptum dicendum est de quarto quaestionis secundi partis septimum. Item docent caput quartum decimae et quadraginta sextae dissertationis articuli centum tres dicentes quattuor titulos quintus capitulum seximum nuntium quadragesimum quintum tres titulos quarantaseptimum sextus titulus sextam rationem sexaginta duos.

Whoever has the faculty of dispensing, » (even delegated, as is more correctly stated . . according to punct. 9, n. 84, contra Nap., yet not contrary to: because a change in communion is part of dispensation; and whoever can do greater things, even greater things can he do.

But he who has the faculty of commutation alone cannot change anything except into an equal: this is to be morally estimated and not "with scruples," as admonishes In qua natione, alt. Cujus est jus dispensandi, non negligenda sunt concomitantiæ— in voto peregri- nationis habenda ratio non tantùm laboris, sed etiam expensarum quas fecisset. . 3. It is asked, whether one who has merely the power of commutation can immutably perform a work somewhat less? The first opinion (which they rightly call sufficiently probable, point 15, n. 438) affirms this, provided that the excess not be notable.

Reason, because if the power to commute were not such, it would be subjected to many anxieties; hence useless, since it is very difficult to find equality in a thing that has been substituted. Then, because if it is probable that a change can be made by proper authority to an equal extent, it is also probable that having the power to change, one can change to something less; otherwise such a power would accomplish nothing. Thus Sa, Bon.

Medin. And probable is the second opinion, which holds that a commutation should be made to an equal thing, but with moral equality, not mathematical, so that there may seem to be a small difference and no manifest excess appear. Thus, note 439, with Cajetan. And so this sentence is really reconciled with the first.

Here it must be noted that properly speaking a personal work can be commuted into a real thing, and conversely, and a perpetual one into a temporal one. . n. 140. with . . with Gob. and . . 6 248. — 5. If this is the case, whose vow has been changed, then it can subsequently fulfill first what it desires: firstly because that is better or at least equal, and secondly because it was done in his favor with a tacit condition, if he pleases. If a vow has been commuted to something less, or even equal, without doubt he can still choose the first work first.

It is common among 17. cap. 3. punct. 18. n. 167. cum . Suar, etc. Doubt exists whether, having been commuted into a better known and accepted thing: then n. 168 denies that the vower can return to the first. But it is more probable that this is conceded commonly . 2. cap. 40. dub. 16. n. 414. . 4. cap. 55. n. 26. . 318. et . n. 169. cum etc., because the

commutation takes place in favor of the vower.

It accepts. They speak more truly. n. 170. with . and Villal. neither yet to obligate such a commutation sub gravi, unless a new vow be made: because whatever purpose does not oblige, unless intervened by promise and intention of obligating oneself, as St. Thomas teaches in 2. 2. q. 88. art. 1. ad. 2. From all these things it is inferred that he who having returned to the first work, nevertheless can still return again to the second under subrogation.

Moreover, and furthermore, if a commutation has been made multiple times in different works, the one who has vowed may choose whatever he wishes from them. . n. 169. at the end, and 174. where it says: And yet, if someone after accepting the substituted thing should vow again the commuted thing: then he is bound to both performances, if he intends to obligate himself anew by a new bond of vow. In dubio autem praesumi, quod habuerit animus se obligandi novo voto, dicunt cit. n. 474., putantque etiam probabile esse oppositum, et sic enim teneri tantum ad rem commutatam. And this is more probable to me, because a doubtful vow does not obligate, according to what is said in book 1, note 28. 249. — «6.

Si voti legitime à superiore commutati materia, sive opus fiat impossibile, vel indifferens, non tenetur redire ad primum, quia obligatio exstincta est. See the texts: When an act of a vow is commuted, even if the substituted matter becomes impossible to culpability of the votary, or if he himself fails to fulfill it, one is not bound to return to the first; for example, a fast substituted for almsgiving was imposed on a certain day, and if then you were unable or unwilling to fast, you have sinned, but are not bound by almsgiving, because the obligation of the first is extinguished through commutation; thus 4. cap. 56. n. 15. and 17. cap. 3. punct. 18. n. 165. with . . 5. n. 136. with common opinion. This, however, does not apply if "obtumutatio fiat auctoritate propriâ; tunc enim, si non impletur secundum opus, implendum est primum; quia non extinguitur tunc prima obligatio, sed salisfit per implietionem superabundantem, vel saltem aequivalentem, ut supra; et hoc certum est. . n. 166. cum. . etc. Ultimò, pro complemento hujus dubii, quaeritur: 4. an habens facultatem commutandi vota pro aliis, habeat etiam pro se?

Resp. affirmatively, as commonly taught regarding the faculty of dispensation: in book 8, decree 3, numbers 8 and 9; and in book 4, numbers 42 and 45; and in question 4, part 7, section 4, number 31. Thus . point 14. note 128. with . Leand.

Thomas Aquinas, II-II, q. 185, art. 8, where he teaches that a prelate can dispense with it together. Questio secunda. Si quis obliviscens voti praestat opus promissum a voto, postea liberabitur?

See what is said at no. 224 regarding the end and what is to be said about the rest at no. 700. Question NoneII. v.

They limit. EIGHTH DOUBT. What is a dispensation, and who can grant dispensations in vows? Why is a reason required to grant dispensation? If a dispensation has been given under bond of faith but without cause, what then?

What if a doubt exists and a cause is present? What causes are sufficient for granting dispensation? Is imperfect deliberation or liberty sufficient? See other notable matters. Can dispensation be granted in a vow made for the benefit of a third party? And what about the vow and the oath of perseverance, which are made in certain congregations? Who can dispense from these? May the Pope dispense in solemn vows?

Whether Bishops can dispense with simple vows? Who can be able to delegate the faculty of dispensing? Do they who have the power wish to dispense even with a penance? Can regular prelates dispense from all religious vows?

Whether novices may delegate the faculty of dispensing? An secularium? 288 There are many notable things to be said about reserved vows. 289 Is an ostitial vow or a religious vow reserved just as a vow is? 290 Is the communication with a reserved vow, even if the matter has been substituted, also reserved? 291 Are reserved vows of chastity, and conditional or penitential religious vows, also reserved? 292 Can dispensation be given by the Bishop of the place from common vows and laws to pilgrims? Released according to lib. 1. n. 158. 250. — "R ESP. 4.

Dispensation is the absolute remission of the obligation of a vow, effected in the name of God. For this to be valid, a just cause is required: such as, for example, the good of the Church or the common welfare. (and pious family; or greater profit to the vow-taker. . 17. cap. 3. punct. 13. n. 125. cum S. Th. . And also in doubt concerning this: Palaus et .) 2.

A notable difficulty in the observance of a vow. Imperfectio actus, vel levis, ac facilitas, ex qua processit votum. . c. c. 17. . 4. 4. Chapter 45.

See no. 24. no. 5. Here it warns the Innocent. III. c. Magna, de voto, tria attendum est in dispensatione votorum: 1.

What is permissible according to equity. 2. What is permissible according to honesty. 3. What is expedient according to utility; from which it is said: 277 with note 43, then dispensation should be made in a vow when that would verge into ruin or snare of mind through perplexity; or when greater spiritual utility is hoped for. — Here it is asked whether dispensation is valid if one sincerely believes just cause to be present which in reality is not?

The first opinion (which those hold with Busemb. (lib. 1. n. 480. in fin.) 4. cap. 44. n. 10. Less, lib. 2, cap. 40, n. 149. Salm, ibid., n. 119. cum cap. 5., punct. 6., §. 2., n. 71., ubi etiam citant; quia talis censenda est voluntas divina ne conscientiae anxietatibus vexentur sed perma- neant firmae determinationes pastorum prout necesse id videtur ad rectum regimen animarum.

The second opinion, which is held by d. 2, p. 9, n. 4, with Basil and Salas, contradicts it: and we follow this if later on a certain conclusion is reached that there was no cause, or that the reason was not sufficient; for the first opinion, although defended by so many AA., is hindered nevertheless by a certain principle which invalidly dispenses from the law below without a sufficient cause. I think it should be said otherwise, if there is a doubt whether the cause was present or whether sufficient reasons existed: firstly, because in a case of doubt, then the decision is made according to the value of dispensation; secondly, because in that case, the primary reason for the first judgment presses, namely, that it would have been excessively scrupulous if men were to inquire about its value after obtaining the dispensation. And since this often happens, God's will is then presumed to be ratified: to have the dispensation such that consciences are pacified and for a correct governance. Wherefore, where certainly nullity of cause is detected, truly it is said in tract. 40. r. 33. And thus indeed it speaks about leg. cap. 22. n. 12., where it says that one can acquiesce well to the dispensation until truth appears contrary thereto, citing Sot. de leg. n. 182.

It is indeed very probable that a valid dispensation can be held to exist even if it was communicated with malicious intent by the one granting the dispensation, provided that there truly was a just cause, as we said in book 4 on law, chapter 184, paragraph 252. — It suffices for the cause of dispensing, through the risk of transgression due to private indisposition or common frailty of men. Even a great difficulty in execution suffices, not only if it was not foreseen, as is said in "De Voto" tract. 47, cap. 3, punct.

13, n. 124, with Leand., but also because the matter is much more difficult to apprehend during the execution than during the deliberation. And even if such a difficulty arises from the weakness of the one promising, as . . with .

It is sufficient as well if the one who makes the vow is troubled by great scruples. . cum . Fag. et 253. — Besides, even if there be no danger of transgression and great difficulty in execution, it suffices as a reason that the vow was made rashly, namely with excessive readiness, or from imperfect deliberation, or without perfect freedom. . 4. cap. 45. n. 28. et Caj. . n. 121. According to this reasoning, a vow made by an immature person can be absolutely dispensed with without any commutation for no other reason, as stated in n. 30 and .

Caj. num. 123. The same must be said if the vow be made out of fear of a light reproach imposed from without. And Palm. with . The same applies when imperfect deliberation or freedom in making a vow proceeded from sadness, or anger, or intrinsic fear of shipwreck*, death, or some other harm; because then vows are apt to be made prematurely, and hence dispensation without commutation is permissible.

If however it were certain that a mature and deliberate consideration had been given, then some commutation should be mixed with the dispensation. Just as it should also happen if the impulsive cause of the vow ceases. Thus it is when . and 254. — “1.

When the cause is insufficient for a full dispensation, it can be partly dispensed with in the vow, and partly commuted. Prelate, seeing and not contradicting (since it is easy to do so), seems to dispense, says St. Thomas: "3." The delegated power to dispense in vows extends also to sworn vows and pious oaths made solely to God.

See VI. on vow, VIII. on marriage, doubt IV. "As we said above at no. 190." Namque etiam juraments religionis, castitatis, etc., sint reservata ut vota?

Both is probable, as we say below n. 259. v. It is asked whether 4.) "Before the acceptance of vows by a certain person or the Church, it is not considered that he has acquired the right; hence, without his injury, it can be dispensed from it or something equivalent to it can be substituted." » 255. — Sed hic fusius discutienda est quaestio, an in voto, redundantià in utilitatem hominis, possit dispensari, aut illud commutari sine ejus consensu?

Resp. 4. quod si votum nondum à tertio est acceptatum, communissima est sententia posse id commutari, ut 309. « 4. cap. 41. n. 7. cum Caj. Sat., Azor., Quar., etc. Etiam si promissio non in solum Deum sed peculiariter etiam in personam directam fuerit, puta si vovens dixerit: Promitto cum voto me daturum tali pauperi, etc.; sed promissio non fuerit acceptata nec ab illo nec ab aliis nomine illius, ut addit n. 40 et 41 cum quod si promissio fiat soli Deo dandi aliquem pauperibus indeterminatis, tunc semper commutari potest, etsi promissio alicui ex pauperibus postea manifestetur et ab illis accepteatur, ut n. 14 cum 29 n. 98. 2 cap. 7 § 6 n. 3 cum quod si e converso promissio facta sit in utilitatem solius hominis et sit acceptata nullatenus sine ejus consensu revocari potest ut diximus supra n. 492. A great doubt arises whether a vow primarily made in honor of God, but secondarily or even less primarily for the benefit of some determined third party, such as a particular Church or poor person, can be commuted after having been accepted by them without their consent?

They deny . 309. . 2. c. 40. dub. 41. n. 90. . n. 48. . tr. 47. cap. 3. punct. 47. n. 456. cum gr. ob specialem affectionem, aut illius necessitatem. However, others, as Sporer in 2. praec. cap. 3. n. 143. with art. 1. n. 3., and Fugund. 155., say that it is sufficiently probable that such a vow can be commuted by the authority of the presbyter, or proper, even after its acceptance. And to this opinion agrees Cajetan (apud n. 47.), who speaking about chapter Licet de regularibus, where it is disposed that one who has professed himself in religion, even though his superior has accepted him, may pass over to a better [community]; Bajamensis gives the reason, because there he gave himself to religion for the sake of God, not for the sake of his superior, and therefore he can change his vow by his own authority, even after acceptance.

Navar. (apud eumdem .) etiam hoc consensit: Cum quis emisit votum dandi alicui certam quantitatem, etiam postquam acceptata est, posset Pontifex commutare, quod principaliter ea promissio non sit facta in gratiam hominum, sed in Dei cultum. And what Navar. says concerning the Pontiff, the same must be said according to what he [Navar.] states. The reason therefore for this judgment, as he speaks in book 3, chapter 47, section 2, note 45, is that these vows are principally directed to God for the end thereof: and poverty is alone the end to which, being less principal or accessory, it should follow the principal end.

Even though the promise is made particularly to this poor man, it is nevertheless made for the sake of God; hence God is the whole cause of the promise, and accidentally He has a share in it, because the poor man who accepts it has acquired some right dependently upon the will of God, to whom the fulfillment of the promise ought to be kept. Here too it must

be noted 4th: that such a simple promise, made to a man and even accepted, although it would obligate him, would not nevertheless obligate him under a very grave, junta extremely probable judgment of the Sentences of Salamanca on contra cap. 4, punct. 4, §. 2: n. 82. as has been noted 2nd: that what was said about the vow must also be said about the principal oath made in honor of God, as is held probably in 2 cap. 8, §. 6, n. 3 and c. 47, §. 2, n. 45 with Fagundez, that it can be relaxed by the Bishop without the consent of the party. But note 3. that this is understood of the gratuitous promise alone; but otherwise it would be said if the accepting party bound himself to some burden for the benefit of the promisor, then indeed, since there thereby intervenes a burdensome contract obligatorily binding on both parts, the promise and consequently the oath cannot be remitted by the promisor, unless the other party consents, according to the law of contracts.

And thus it happens with perseverance in the vow, which is made in the fifth congregation of PP. missionis S. Vincentii à Paulo, as well as in our smallest congregation SS. Redeemtoris, ubi oblati licti principaliter in obedientiam Dei juramento promittant perseverare in congregatione; attamen, quia eodem tempore congregatio eos accipiendo se obligat ad ipsos sustentandos et instruendos, et ad non dimittendos sine justa et gravior causa (de qua autem superiores non tenentur dimissis rationem reddere),ideo cum intercedat hic contractus, utrimque obligatorius, nequit juramentum ab alio remitti, quam ab ipsa congregatione vel a Summo Pontifice, prout supremo bonorum ecclesiasticorum Domino. This is evident from the warning of the Saints.

Of our Lord Benedict XIV. or the bull Convocatis issued on the 25th. Ninth. Year 1749. §. 32. for the jubilee year 4750, where it is said: Finally, so that they may know (from their confession) that they are to abstain from the commutation of their vows, in which matter prejudice to a third party is involved. Wherefore concerning that which pertains to vows, although simple, or perseverance, or other things customarily issued in some congregation or community, and accepted by a third party as obligatory vows, they do not interfere.

Thus the aforementioned Pontiff our master at F. Theodorum à Spir. S. in Tract. de jubil. novissimè edito Romæ eodem anno 4750, qui cap. 14. §. 2. n. 40. quæstionem proponens, an votum, vel juramentum perseverandi emissum in congregationibus à sacerdo- tibus, sive mulieribus oblatis possit commutari in vim jubilæi? respon- det negativè, hanc rationem adducens: Nec quia reservatum, sed quia emissum est per modum contractus onerosi ultro citròque obli- gantis.

For indeed, the Supreme Pontiff never confers the faculty of commutating a vow where justice is violated to others, as stated in chapter Cum sit, concerning rescripts. It does not hinder that this vow of persevering principally be made for the cult of God, secondarily for the obedience of the congregation; because this does not prevent, but rather follows, such a contract being obligatorily bound on both sides among the community or those who have taken the vow and the congregation. Therefore, when the right sought by the congregation is violated, if the vow emitted with an unnecessary consent were to be commuted, then the jus of the congregation would be infringed. By the same reasoning, it follows that vows made by students for missionary purposes among the infidels cannot be commuted, etc., when third-party prejudice is involved, etc. Thus, the aforementioned author.

And the same applies to all. Pontiff Benedict. XIV. In the bull Inter praeteritos (issued on December 3, 1749), n. 66, it is thus stated: "As for the commutation of vows in which third-party prejudice is involved, which are indeed forbidden to those under penance, he appropriately writes in his religious book 6, chapter 5, note 7, concerning vows of perseverance, which some make when they enter a congregation, which assume a nature of contract and mutual obligation between themselves and the congregation, which receive them, in which cases they cannot dispense with penitentiaries." 256. — • Resp. 2.

The power to dispense belongs to all prelates who have jurisdiction in the external forum, or privilege. . 2. cap. 40. n. 42. et commun. Wherefore they are dispensed as follows: I. The Pope with regard to all faithful in all vows.

II. The bishop is responsible in regard to his own subjects in all vows; but not the parish priest, because he has only internal forum jurisdiction. III.

Regular prelates are exempt with respect to their religious and novitiates: this pertains to vows, which they made either in the world or even during their novitiate (4) and 107. . 9. de matr. d. 29. But not regular prelates who are not exempt, nor abbesses. Neither penitentiaries nor vicars of bishops, unless special faculty is delegated to them. "It is asked, whether the Pope can dispense with solemn vows?"

As regards clerics in sacred orders, it can be well-probably promised in a vow of chastity, since this vow is sufficiently probable according to ecclesiastical law annexed solely to the sacred orders (See book 6, n. 808.). Thus S. Thomas 2-2, question 88, article 44, and 8, chapter 6, dubium 4, n.

44, with others, against Arag. de statu relig. c. 4, punct. 3, n. 44, because these vows are essentially annexed to the religious state by divine law. But more probably and commonly St. Thomas affirms this in 4. d. 38. quæst. 4. art. 4. ad 3. et n. 42. with St. Antonius . . . And although it may seem that St. Thomas retracts himself in 2. 2. dict. Question 88. art. 14. But Cajetan in the same place and with Azor and Basil explain the Saint as having understood that the Pontiff cannot dispense in this sense with a monk remaining a monk and at the same time be married.

Consequently in the first cited place he expressly taught that it is possible for the Pontiff to dispense, although a very urgent cause, namely for the good of all Bolesławia, or of some kingdom, province, remain. Reason, because it is rightly considered that this privilege has been granted to the Pontiff by God, who has entrusted the governance of the whole Church to him. A certain thing is established, namely, that the Pope can dispense in simple vows, and Bishops in non-reserved matters.

By what reason however they may be said to have it, I leave to be determined. Book 6, note 986. It is also certain that all prelates who by right have the ordinary faculty to dispense in simple vows can likewise delegate this power to others, as stated at point 10, number 83. But whoever has the faculty of dispensing, whether ordinary or delegated, considers his own vows to be nullified thereby, because no one can vow under a condition of his own consent; this is certain according to . and Credal. 3, p. 4, n. 488; yet they can dispense with them among themselves voluntarily, since it is an act of discretionary authority.

Thus [it is stated] in 2. c. 40. n. 416. I believe this: cited and 1.4.n.799. with Laym. oum Ills., who asserts that it is a common opinion against Hembo and others some. 357. — However, religious vows can be dispensed by their prelates if they have been issued with their permission; and even if they were vows of transferring to a stricter religion, they may be dispensed if the religious manner of living becomes known not to be useful. See. c. 3. punct. 41. n. 90. and 91.

Just as a bishop could also dispense with the vow of entering into a stricter religion, retaining the substance of the religious vow; since such a dispensation is found to be reserved by no law; so too . 2. c. 40. ibid. 43. n. 407. and Solus, cited n. 94. The faculty of dispensing can be delegated by the aforementioned prelates even to a simple tonsured cleric. See point 40, note 36: In substantial vows, however, as well as in those annexed to them, such as the vow of not eating flesh, renouncing dignities, etc., which are customarily issued in certain religious orders, it is not permissible to dispense, except by the Pontiff.

It is common with n. 92. Furthermore, in novices' vows, if they are not reserved, dispensation can be granted both by the prelates of the religion and also by the own bishops, as it is taught ibid. n. 89. In accordance with the common decree DD. cum . 2. c. 40. dub. 18. n. 134. and ibid. n. 94., all confessors can dispense in vows of any faithful within and outside confession (it is not at least required that, who has the faculty, dispenses in confession): and this from various pontifical privileges which Eibel mentions n. 280.

Likewise possess the same faculty legati a latere et nuntii commissi in provincia: similarly, chapter, during the vacancy of the see, and abbots having episcopal jurisdiction over a territory. See n. 86: "Resp. 3." The aforementioned individuals, who are inferior to the Pope, can dispense in matters of vows, except for five vows reserved solely to the Pope, namely: perpetual consecration, approved religion, pilgrimage to the thresholds of the apostles, to Saint James Compostella, and Ultramarine, or to the Holy Land.

See Bonaventure, Dec. 258. – Regarding reserved vows, more should be noted. Note 1: That the power to dispense in these matters is not understood as belonging to the Pontiff unless there be a special or at least general concession, because such a power is expressly granted, according to Extraordinary sources. And if concerning the fifth of Dominic on penance.

and remission where the Pontiff commands that such vows not be relaxed except by special license and our certain knowledge. And in c. If a Bishop, the same [rule] applies. It is said: In a general concession, those things do not come that one would not have reasonably conceded in truth.

And it is common. See 17. chapter 3. paragraph 42. note 146. If indeed permission is granted to dispense with reserved matters, then it extends to all cases unless some vow is objected: Sudr., ibid.

Note II. that Bishops, and those having similar jurisdiction, can rightly dispense with reserved vows in urgent necessity, namely, if there is no easy access to the Pope and danger of serious harm, whether spiritual, such as violation of a vow, scandal, disputes, or some other sin; or danger of temporal harm to oneself or others, especially grave infamy for a woman and similar matters. Thus. 2. cap. 40. dub. 18. n. 126. et 127. Sanchez lib. 4. cap. 4. n. 44. et similiter Sylv.

Tambur and others according to point 41, note 96. Moreover, in that case, even confessors-mendicants can dispense and admit themselves to these vows? They commonly deny it, Tambur.

Croix, Henr. quia Episcopi tunc dispensant vero jure ordinario, ut valde probabiliter docet cum 6. de matrim. n. 1128. v. It is questioned. But observe here, that the aforementioned proceed when a dispensation is granted in a reserved vow for the sake of chastity, with a view to contracting marriage; for then it is required that there be danger in delay, and that no easy recourse be open to the Pope.

For if marriage is already contracted, even without such danger, Bishops, like confessors and mendicant monks, can dispense in a vow of chastity for the purpose of obtaining what is due. See concerning the mother. I. 6. n. 987.

It must be noted, however, that the aforementioned faculty, which is probably granted to Bishops and others to whom from them has been communicated the power of dispensing in reserved vows as stated above, is not granted to confessors during jubilees who have from the Pope such a faculty of dispensing with simple vows, for what is conceded to Bishops on account of their ordinary power is not conceded to confessors during jubilees. So rightly says F. Theod. à Spir.

Saint on the Commandments, Book 41, Section 2, Note 21. It must also be warned that the aforementioned dispensation is not to be granted except insofar as necessity obliges; hence, if sufficiency lies in suspending the vow, no dispensation can be given: likewise, if a dispensation is given with an attached vow of chastity, so as to perform certain things for its honor, he cannot marry otherwise. Chapter 47, canon 3, point 42, note 104 at the end with . . etc. Notandum III. that the aforementioned vows are least of all reserved: I. If they have been issued under the obligation of a light vow, as in 4. cap. 40. n. 47. and . n. 103. cum. . . cum ; otherwise, if abstinence from every venereal act, neither a vow of chastity for some time; nor a vow to emit a vow of chastity or religion, or to receive sacred orders, because it is not a vow of chastity made, but one that is to be made.

Thus . . note 104. Neither a vow of conjugal chastity. . with; nor a vow of pilgrimage to Rome, etc., if it has not been made solely for the cause of devotion, and precisely for those places; whence, if anyone should wish to go to Rome to visit the image of S. Mary Major, etc., no vow is reserved. . n. 77. et . n. 105. V.

Although vows are reserved, the circumstances thereof are not thus reserved; for example, traveling as a mendicant, entering a stricter religion, can the Bishop dispense so that he may enter a less strict one; likewise, if the vow be to enter immediately, the Bishop can dispense with the cause so that the entry may be delayed. And ibid., n. 106. VI. The disjunctive vow is not reserved, for example religionis or jejunii; at least if he has not chosen the reserved part.

It is doubtful whether it is reserved, if the part already selected has been reserved? They affirm [the same] with Leand. [of] v. Here is the question.

Whether, however, after the marriage contract has been concluded, the Bishop can dispense from something pertaining to chastity, having released the spouse? See what is said in the book on marriage, lib. 6, n. 987, where it is probable when . And it is also said that confessors and mendicants can do this, it is stated there in no. 987.

But here several questions remain to be resolved. 259. — It is queried whether the vow of chastity or religion is equally reserved as a promise? There are three opinions. The first opinion affirms as stated in question 12, no. 12: because what is decreed concerning one is also decreed concerning the other, according to c. Postquam, de elect., no. 6.

But this reason does not seem sufficiently firm, since it is commonly taught that the bond of a vow, which obligates out of fidelity and reverence toward God, is greater than the bond of an oath, which obligates solely out of reverence, as St. Thomas teaches in 2. 2. q. 80. a. 8. Therefore, such oaths are not usually reserved for Bishops, as it is said in the cited text and treatise 4, response 69, among others. Second opinion, when [it is said] in book 8, decree 43, number 4, and Sot. Caj.

Azor, Val. et cum aliis distinguit: si juramentum includat votum seu promissionem obligatoriam erga Deum dicit illud esse reservatum; secus si non includat. But this opinion does not seem to speak fittingly even; for when in such a vow two bonds are supposed to be present, namely, that of the vow and that of the oath, then it should be said that the vow is reserved, but not the oath. Therefore, the third opinion, as stated in chapter 3, note 97, with Tamburini, speaks more congruously and holds that such a vow is extremely reserved; and if perchance there be included within it a vow, certainly the vow will be reserved, but not the vow the vow of an oath.

And I believe that he has truly understood this; yet a great doubt remains

as to when it is to be judged that a vow is included or not included in such a vow? num. 4. Diana and the cited authorities believe with great likelihood that such a vow is included in this oath; especially when, looking to render divine honor, a thing is offered. However, it admits that such a vow can be given without a vow, when one is induced to take an oath for some human reason, for example, if on account of having lost an office, or out of anger towards kinfolk, he swears that he will enter religion.

But more properly speaking, I think it should be said that if such a person intending to bind himself by religion under a double bond, namely that of vow or obligatory promise under a grave and greater bond of oath, then although he may be dispensed from the oath, yet remains nevertheless bound by the vow. But si intendat se graviter obligare tantum vinculo juramenti; ita ut emittit juramentum religionis, non ad firmandum alio vinculo suam promissionem, sed ad firmandum suum nudum propositum, seu promissionem, de se non obligatoriam, tunc tenetur sub gravi tantum ex vinculo faramenti, à qua obligatione per relaxationem juramenti omnino liberatur: quia tunc obligavit se Deo, non ut creditori suam promissionem acceptanti, sed ut testi exigenti veritatem sui testimonii in re promissa, seu proposita; ut in hoc rectè loquitur. 4. cum Lopes et Valent. In dubio autem, an adfuerit tale votum, sive promissio obligatoria, jam communis est regula, quod votum, dubie emissum, non obligat.. 260. —Whether, then, the reserved vow, having been commuted, remains also reserved as to its matter?

Azor and others affirm, according to Leander, that then the same bond of vow is transferred to that [one]. But commonly and more probabiliy they deny it. 2. cap. 40. dub. 48. n. 124. Sanchez Decretum libri quarti caput quadraginta numerus quaduaginta et translatio quarta septuagesima de voto caput tertium punctua quadraginta duos nomen quadringentas novem.

Reason why, although the substituted matter has the same bond of vow, yet since it is not reserved, it draws the reservation with it very little, which was originally attached only to the matter. It is asked whether a conditional vow of chastity, etc., is reserved? 4. It must be noted that if the condition is concerning the past or the present, certainly the vow remains reserved, because then it is truly said to be absolute, and not conditional, since the condition does not suspend the obligation.

See Sal-mant. de matrim. tr. 9. cap. 7. n. 4. The same must be said if the condition is of the future necessary, which is considered as not attached; or even of the future contingent, which is common, for example. If I shall

live, if I shall be able, etc. Likewise, if the condition is appended to the mind with the intention of suspending not the obligation but the execution of the vow, for example.

I vow that I will enter the religious life, if I attain the twentieth year; or if I complete the course of studies. See c. 3, punct. 42, n. 440. 2. It must be foreseen that if the condition has not yet been fulfilled, it can be dispensed with in a vow by anyone having ordinary authority to ordain, because reservation is understood as pertaining to an obligation that has already been consummated.

It is common with Salmantica, ibid., n. 44, 264: — A great doubt arises, whether a conditional vow from the future, with a condition already fulfilled, is reserved? There is a triple probable opinion. The first opinion asserts that whether the vow be conditional or penal; for, upon fulfillment of a true and valid condition, the vow is completed and becomes absolute, even if it had been issued then.

Thus St. Thomas, etc., according to Salmanticenses, tract 47, cap. 3, punct. 42, num. 443. The second opinion states that a conditional vow is indeed reserved, but not a penal one; for a penal vow does not arise from affection towards religion or chastity, but rather from horror towards them, since it is promised as a penalty. Thus in the second question, chapter forty, doubt number forty-eight, note number four hundred and thirty-two, and .

The third opinion, however, is decidedly more probable than that which are held in 4. c. 40. n. 94. Croix l. 3. p. 4. n. 545. et 546. n. 114. et 410 Lib. 4. . Treatise 2.

Of the second precept of the Decalogue. 418. when . Prado; 286. calls it most probable that . . he teaches, all vows, whether conditional or penal, are not reserved; the reason being that a vow, in order to be reserved (as all appear to admit, even the authors of the second opinion), must proceed from perfection and solely from affection directed towards the promised thing: for reservation is to be understood in this way. Votum autem poenale tale non est, ut patet; neque votum conditionale, ubi conditio praefertur rei promissae, et ideo principalis affectus magis ad conditionem pertinet.

Wherefore, although the obligation is rendered absolute upon fulfillment of the condition, yet the vow, since it proceeds from an imperfect affection, is not reserved. Nevertheless, it is said otherwise, as certain

Noeticius states (P. cap. XI. §. 2. num. 9.), if someone were to vow religion with a condition, for example, if his mother should die; because then the vow would rather be absolute, even though it does not oblige to execution during the mother's life: for the particle "si" often corresponds to the particle "cum" when. — Whether, however, a Bishop of the place can dispense from vows and oaths found among foreigners? The probation is denied when it is made cum l. 3. d. 25. n. 42. et 13. c. 3. punct. 5. §. 4. n. 55. et aliis communiter against Pontius, unless they at least have the intention of remaining there for a greater part of the year.

See however what Fuscus says on this question in book 4 on law, chapter 158. And see also what is said n. 332 at the end. But moreover, where it is sufficiently probable with . # TREATISE III. # ON THE THIRD AND FOURTH COMMANDMENTS ## CHAPTER I. #

What is the third precept: Remember, etc.? Is this precept natural or ceremonial? Is this precept given to command an internal worship? And whether this precept be of affirmations. Is the observance on Sunday from divine law? May bishops appoint feasts? From what time shall the obligation of a feast commence? To what does this precept oblige? Which servile works are permitted on feasts in the kingdom of Sicily? 229 Is there an obligation to hear sermons? And what is the obligation of bishops and parochial priests to preach? Who fear to observe feasts? 271 Is it permissible to impose servile duties upon infidels during feasts? 263 —“This precept, insofar as it desires some time to be sanctified or devoted to divine worship, is natural and still binding; but insofar as it designates that particular day as the Sabbath, it is ceremonial and abrogated by the New Testament, and instead by the Church designated the Lord's Day, with a prescribed manner of celebrating the feasts, such that certain works are permitted on those days, while others are prohibited.”

Bonaventura. Theologia减速 It is asked whether the precept to sanctify the Sabbath was natural or ceremonial? It is responded as Bus. says that the precept, insofar as it determined at some time of the year to be vacant for God, was natural and bound all; hence it is reckoned among the Decalogue precepts: but as it determined the day of the sabbath from evening until evening (as in Lev. 23.) it was ceremonial, and bound only the Hebrews.

It is common with the Catechism. Rom. 3. p. in præc. et 6. et 5. Th. 2. 2. q. 422. art. 4. ad 1. qui sic docet: Præceptum de sanctificatione sabbati... est partim morale, partim autem caeremoniale.

Morally indeed is it regarded as regards that which man ought to set aside

some time of his life for divine observance... But inasmuch as this precept determines a special time as a sign of the creation of the world, so is it a ceremonial precept... Wherefore... it is placed among the moral precepts of the decalogue, inasmuch as it is moral, not inasmuch as it is ceremonial. See in the third part of the treatise chapter one on this point extensively discussed from number one to 7.264. — It is questioned whether this precept commands the cultus of God, even interior? Scotus, Angel, et Tabien affirmant, apud punctum 2., n. 8., unde dicunt: fideles teniri ex hoc praecepto ad eliciendos actus charitatis et contritionis; sic enim obtinetur animae sanctificatio quae hoc praecepto jubetur.

But most commonly S. Antoininus p. 2., tit. 9., c. 7., § 2., q. 4., a. 4., concl. 2., dub. 1. 2., c. 35., n. 8. et ex n. 9. cum Cov. etc. ex D. Thom. 4., 2., q. 122., art. 4., ubi docet, quod ad interiorum cultus non cogimur, sed movemur à Spiritu sancto: Et ideo in tertio praecepto decal. praecipitur exterior Dei cultus. The same thing is taught by Caecheth. In Romana de tertio praecepto p. 3. n. 1. it is stated: This precept of the law prescribes that external worship, which we owe to God, be rendered.

Sanctification of the soul however is indeed the end of a precept, but the end of a precept does not fall under a precept, according to the common axiom of theologians, as that same text teaches in 2. q. 100. art. 9. both in the body and explicitly at 2. ubi: For it is not the same thing, the end of a precept, and that concerning which the precept is given. Question 3. whether this precept is affirmative or negative? And it is responded, that it is affirmative, because it does not oblige always and to always. . . Fag. cum. n. 45. contra Caj. et sed hoc negatur.

See Catech. 265. — It is queried whether observance of the Lord's Day is natural law, divine law, or merely ecclesiastical law? The first proposition asserts that it is divine; because the Lord's Day succeeded in place of the Sabbath, which was instituted by divine law for the worship of God. Thus Abb.

The first opinion asserts that it is divine; because the Lord's Day succeeded in place of the Sabbath, which was instituted by divine law for the worship of God. Panorm. at pp. 4, n. 37, and this adheres to Croix 1:3: p. 4, n. 691 with Mar. et . But much more probable and common is the second opinion, that unless by ecclesiastical law from the Catechism.

Rom. 3, part., n. 49, ubi: Plaauit aetern Ecclesiae Dei, ut diei sabbati cultus in Dominicum transfertur diem. The same is taught by St. Thomas, II-II, Question 122, Article 4, Ad 4. The observance of the day of the Lord

succeeds the observance of the Sabbath; it is not of the law, but instituted by the Church.

And hence the observance of the Lord's Day can be changed and dispensed with by the Church; although in this dispensation no day could be entirely set aside for divine worship without being specially dedicated to it, as Alexander III did in this matter, permitting fish on days of fast, according to what is stated in c. Licet de feriis, where he says: "It is permitted both from the pages of the Old and New Testament that one day be especially set aside for this rest; and also those other days which have been dedicated by the Church to the Majesty of the Most High and to the feasts of the holy martyrs; we grant permission so that on days of the Lord's Day, and other festive days (excepting the greater solemnities of the year), if fish from the earth be found unsuitable for capture, necessity may intervene in their taking." They hold this opinion, Soto de Iustitia, librum 2., (parte 4., articulus 4., ad 2.) D. tit. 9. c. 7. 1.

Azor, tom. 2. l. 1. c. 2. q. 2. . l. 2. c. 4. n. 8. . l. 5. cap. 2. dub. 4. ex n. 2. . 340. et Salmi. ibid. n. 38. communiter cum S. Fill. 52. p. 2. n. 45. ac Bell. But a great objection is urged, namely: The precept of the Sabbath was certainly natural and moral; for this reason it was numbered among the precepts of the Decalogue; therefore, Sunday, which has taken the place of the Sabbath, is also by nature or divine right. It is replied that although it is by divine and natural law that some determined time should be designated for worshiping God, yet the determination of this worship, and the days on which it was to be offered, was left to the disposition of the Church by Christ: so that then a Pope could decree that observance of the Lord's Day would last only for certain hours, and that some servile works might be permitted; hence this precept as regards the exhibition of worship is indeed divine, but as regards the determination of worship and time, it is ecclesiastical.

See chapter thirty-eight and thirty-nine, and at the end of book twenty-three concerning the third precept. What is asked 5. is whether bishops can indicate feasts for their own dioceses? It is evident that they can be determined from the book "Conquestus," concerning holidays.

But it is doubtful from the bull of Urban. Eighth: whereupon, when the bishops are admonished by the Lord to abstain from instituting feasts. But those words are rather exhortative than preceptive.

See 23 c. 4. punot. 6 § 4 n. 405 and 406. Bubium majus: is it required that there be agreement of the clergy and the people? It must be affirmed with

Azor, etc., n. 408 and 409. ex dict. cap. Conquestus, de fer. However, it must be noted that it is sufficient if the clergy and the people do not contradict.

It must be noted that although the Bishop is unable to indicate perpetual feasts when they contradict those appointed, he can still do so either once or on alternate occasions. But, Father ibid., n. 410, say that it suffices by custom alone to have the consent of the clergy; but this is contradicted . n. 414, according to ancient law. They nevertheless note that, attentive to the new law, from the bull of Urb.

VIII. All, published in the year 1642, can bishops institute perpetual feasts without the consent of the people and clergy; thus n. 412. and 413. with Bòrd. But Croix contradicts this, saying that the people do not have cultus and therefore can be dispensed with in confession; and this is done according to various privileges of the pontiff, which are found at 94: Eibel n. 280.

'Legati à latere, et nautii in provincia sibi commissa habent eamdem facultatem; item capitulum, Sede vacante, et abbatés episcopalem jurisdictionem habentes.' See n. 86. Resp. 3.

The aforesaid supradicta, the inferior Popes can dispense in matters of vows, excepting five alone which are reserved to the Pope, namely the vow of perpetual chastity, religious approbation, pilgrimage to the thresholds of the apostles, to Saint James Compostella, and ultramarine, or to the Holy Land. See Bonaventura. II. q. 258. — As regards reserved vows, much more should be noted. I. Notandum quod facultas dispensandi in his non intelligitur concessa à Pontifice, nisi adsit concessio specialis, vel saltem generalis per clausulam, quia talis facultas expresse conceditur, ex Extrav.

And si Dominici 5 de pænit et remiss ubi Pontifex præcipit non relaxari talia vota nisi ex speiidi licentia et certa scientia nostra. And in c. Si Episcopus, eadem titulus: In generali concessione non veniunt ea quas non esset verisimiliter concessurus. And it is common.

See 17. chapter 3. paragraph 42. note 146. If however the faculty of dispensing in reserved matters is conceded, it extends to all things, unless some vow is objected: Sudr. ibid. Note II. that Bishops, and those having similar jurisdiction, can rightly dispense with reserved vows in urgent necessity, namely, if there is no easy access to the Pope, and danger of serious harm, either spiritual, as a result of violation of the vow, scandal,

disputes, or other sin; or temporal danger, whether their own or another's, especially grave infamy for a woman and similar matters.

Thus. 2. cap. 40. dub. 18. n. 126. et 127. Sanchez lib. 4. cap. 4. n. 44. et similiter Sylv. Tambur and others according to punctationem 11. n. 96.

Whether, however, in that case confessors themselves can also dispense and admit to these vows? They commonly deny it. Cross, Sancl. with Anacl.

Henry says that because bishops then dispense truly according to ordinary jurisdiction, as very probably it is taught ibid. with 6. de matrim. n. 1128. v. It is asked. But note here that the aforementioned proceed when a dispensation is granted in a reserved vow, such as for chastity to contract marriage; for then it is required that there be danger in delay, and that there not be an easy recourse to the Pope.

For if marriage is already contracted, even without such a danger, Bishops as well as confessors and mendicants can dispense in the vow of chastity for the purpose of obtaining what is due. Consider regarding marriage. I. 6. n. 987.

It must be noted, however, that the aforementioned faculty, which is probably granted to Bishops and others to whom from them has been communicated the power of dispensing in reserved vows as stated above, is not conceded to confessors during a jubilee who have from the Pope such a faculty of dispensing in simple vows; for what is conceded to Bishops on account of their ordinary power is not conceded to confessors during a jubilee. Thus rightly says F. Theod. à Spir.

Saint on the Commandments, Book 41, Section 2, Note 21. It must also be warned that the aforementioned dispensation is not to be granted except insofar as necessity obliges; hence, if sufficiency lies in merely suspending the vow, no dispensation can be given: likewise, if a dispensation is given with an attached vow of chastity so that one may marry someone to restore its honor, he cannot then marry another. IV. 47. c. 3. punct. 42. n. 104. at the end with . . etc. Notandum III. that the aforementioned vows are least of all reserved: I. If they have been issued under the obligation of a light vow, as in 4th chapter, section 40, note 47, and note 103 with . . with ; otherwise, if abstinence from every venereal act is observed, nor a vow of chastity for some time; nor a vow of emitting a vow of chastity or religion, or of receiving holy orders, because it is not a vow of chastity made, but to be made.

Thus . . note 104. Neither a vow of conjugal chastity. . cum; nor a vow of pilgrimage to Rome, etc., if it has not been issued solely for the cause of devotion, and precisely those places; whence, if one should wish to go to Rome to visit the image of S. Mary Major, etc., no vow is reserved. . n. 77. et . n. 105. V.

Although vows are reserved, the circumstances thereof are not nevertheless reserved; for example, to go on pilgrimage begging alms, to enter a stricter religion, the Bishop can dispense so that he may enter a less strict one; likewise, if the vow be to enter immediately, the Bishop can dispense with the cause so that the entry may be delayed. And ibid., n. 106. VI. The disjunctive vow is not reserved; for instance, concerning religion or fasting, at least if he has not chosen the reserved part, as in 46.2. c. 40. dub. 18. n. 124. and . 107.

It is a doubt whether it is reserved if the part that has already been chosen is the one reserved? They affirm with Leand. that. Here it is asked: Whether, after the marriage contract has been concluded, a bishop can dispense—on account of the emission of chastity—from the conjugal bond?

See what is said in the book On Marriage, volume 6, article 987, where it is probable with . And it is also said concerning confessors and mendicants that they can do this, according to the same place, n. 987. But here several questions remain to be resolved. 259. — It is queried whether the vow of chastity or religion is equally reserved like a vow?

There are three opinions. The first opinion affirms as stated in question 12, no. 12, that because one thing is decreed concerning the equal disposition, also another is decreed concerning the other, according to c. Postquam, de elect., in 6. But this reason does not seem sufficiently firm, since it is commonly taught that the bond of a vow, which obligates out of fidelity and reverence toward God, is greater than the bond of an oath, which obligates solely out of reverence, as St. Thomas teaches in 2. 2. q. 80. a. 8. Therefore, such oaths are not usually reserved for Bishops, as it is said in the cited text and treatise 4, response 69, among others.

Second opinion, when [it is said] in book 8, decree 43, number 4, and Sot. Caj. Azor, Val. et cum aliis distinguit: si juramentum includat votum seu promissionem obligatoriam erga Deum dicit illud esse reservatum; secus si non includat.

But this opinion does not seem to speak fittingly even; for when in such a vow two bonds are supposed to be present, namely, that of the vow and that of the oath, then it should be said that the vow is reserved, but not the oath. Therefore, the third opinion, as stated in chapter 3, note 97, with Tamburini, speaks more congruously and holds that such a vow is least reserved; and if perchance it includes within itself a vow, then indeed the vow will be reserved, but not the vow the vow of the vow. And I believe that he has truly understood this; yet a great doubt remains as to when it is to be judged that a vow is included or not included in such a vow? num. 4.

Diana and cited authorities believe with great likelihood that such a vow is included in this oath; especially says Sanch that when one offers a divine honor looking to it. However, it admits that such a vow can be given without a vow, when one is induced to take an oath for some human reason, for instance, if on account of lost office, or out of anger towards kinfolk, he swears that he will enter religion. But more properly speaking, I think it should be said that if such a person intending to bind himself by religion under a double bond, namely the obligatory vow or promise and a stronger bond of solemn vow, then even though he is dispensed from the vow, he remains nevertheless bound by the vow.

But si intendat se graviter obligare tantum vinculo juramenti; ita ut emittit juramentum religionis, non ad firmandum alio vinculo suam promissionem, sed ad firmandum suum nudum propositum, seu promissionem, de se non obligatoriam; tunc tenetur sub gravi tantum ex vinculo furamenti, à qua obligatione per relaxationem juramenti omnino liberatur: quia tunc obligavit se Deo, non ut creditori suam promissionem acceptanti, sed ut testi exigenti veritatem sui testimonii in re promissa, seu proposita; ut in hoc rectè loquitur. 4. cum Lopez et Valent. In dubio autem, an adfuerit tale votum sive promissio obligatoria, jam communis est regula, quod votum dubie emissum non obligat... 260.—Whether, when a reserved vow is commuted, the material thing reserved will also be reserved? Azor and others affirm, according to Leander, that then the same bond of vow is transferred to that [one].

But commonly and more probabily they deny it. 2. cap. 40. dub. 48. n. 124. Sanchez Decretum libri quarti caput quadraginta numerus quaduaginta et translatio quarta septuagesima de voto caput tertium punctua quadraginta duos nomen quadringentas novem. Reason why, although the substituted matter has the same bond of vow, yet since it is not reserved, it draws the reservation with it no more than a little, which was dedicated to the primary matter alone.

It is asked whether a conditional vow of chastity, etc., is reserved? 4. It must be noted that if the condition is concerning the past or the present, certainly the vow remains reserved, because then it is truly said to be absolute, and not conditional, since the condition does not suspend the obligation. See Sal-mant. de matrim. tr. 9. cap. 7. n. 4.

The same must be said if the condition is of the future necessary, which is considered as not attached; or even of the future contingent, which is common, for example. If I shall live, if I shall be able, etc. Likewise, if the condition is appended to the mind with the intention of suspending not the obligation but the execution of the vow, for example. I vow that I will enter the religious life, if I attain the twentieth year; or if I complete the course of studies.

See c. 3, punct. 42, n. 440. 2. It must be foreseen that if the condition has not yet been fulfilled, it can be dispensed with in a vow by anyone having ordinary authority to ordain, because reservation is understood as pertaining to an obligation that has already been consummated. It is common with Salmantica, ibid., n. 44, 264: — A great doubt arises, whether a conditional vow from the future, with a condition already fulfilled, is reserved?

There is a triple opinion probable. The first opinion asserts that whether the vow be conditional or penal; for, upon fulfillment of the true condition, the vow is completed and becomes absolute, even if it had been issued then. Thus St. etc., according to Salmantica, tractate 47, chapter 3, point 42, number 443.

The second opinion states that a conditional vow is indeed reserved, but not a penal one; for a penal vow does not arise from affection towards religion or chastity, but rather from horror towards them, since it is promised as a penalty. Thus in the second question, chapter forty, doubt number forty-eight, note number four hundred and thirty-two, and . The third opinion, however, is decidedly more probable than that which are held in 4. c. 40. n. 94.

Croix l. 3. p. 1. n. 545. et 546. . n. 414. et . 440 Lib. 4. Treatise 2. Of the second precept of the Decalogue. 415. when .

Prado; 286. calls as most probable when he teaches that all vows, whether conditional or penal, are not reserved; the reason by which a vow should be considered reservable (as all appear to admit, even authors of the second opinion) must proceed from perfection and solely from the

intention directed toward the promised thing: for reservation is to be understood in this way. The penal vow, however, is not such as is evident; nor is the conditional vow, where the condition is preferred to the promised thing, and thus the principal affection is more directed towards the condition. Wherefore, although the obligation is rendered absolute upon fulfillment of the condition, yet the vow, since it proceeds from an imperfect affection, is not reserved.

Nevertheless, it is said thus, as a certain Neo-Platonist rightly states (P. cap. XI. §. 2. num. 9.), if anyone were to vow religion with a condition, for example, if his mother should die; because then the vow would rather be absolute, although it would not obligate him to fulfillment during the mother's life: for the particle "si" often corresponds to the particle "cum." — Whether, however, a Bishop of the place can dispense from vows and oaths found among foreigners? It is less probable to deny with L. 3, d. 25, n. 42 and 43, c. 3, punct. 5, §. 1, n. 88, and others commonly against Pontius, unless they at least have the intention of remaining there for a greater part of the year. See however what we have said extensively about this question in lib. 1 de leg. n. 488.

And see also what is said n. 332 at the end. But moreover, where it is sufficiently probable with . # TREATISE III. # ON THE THIRD AND FOURTH COMMANDMENTS ## CHAPTER I. # What is the third precept: Remember, etc.? Is this precept natural or ceremonial? Does this precept command interior worship?

And whether this precept be affirmative. Is observance of the Lord's Day from divine law? May bishops appoint feasts? From what time does the obligation of a feast begin? To what is this precept obligatorily directed? To which servile works are permitted on feasts in the kingdom of Sicily? 229 Is there an obligation to hear a sermon? And what is the obligation of bishops and parochial priests to preach? 270 Who are bound to observe feasts? 271 Is it permissible to impose servile tasks upon infidels on feast days? 263.— "PRÆCEPTUM hoc, quatenus vult tempus aliquod sanctificari, sive impendi cultui divino, est naturale, et adhuc obligat: quatenus vero tempus id designatur die sabbati, est caeremoniale, et in novo Testamento abrogatum, ac pro eo ab Ecclesia designatus dies dominicus, et festi, praescriptusque modus colendi, ut quædam opera illis diebus fiant, quædam non: haec prohibentur, illa præcl- piuntur." Bonaventura. Theologia減速

It is asked whether the precept to sanctify the Sabbath was natural or ceremonial? It is answered in accordance with Bus.: that precept which determined that during some year one should be vacant for God was

natural and bound all; therefore it is reckoned among the Decalogue's precepts: but as it determined that the day of the sabbath should be from evening to evening (as in Lev. 23.) it was ceremonial, and bound only the Hebrews. It is common with the Catech.

Rom. 3, p. in præc. et 6, et S. Th. 2, 2, q. 422, art. 4, ad 1, qui sic docet: Præceptum de sanctificatione sabbati... est partim morale, partim autem caeremoniale. Morally speaking, it is with regard to this that man is obligated to set aside some time of his life for divine recreation... But insofar as this precept determines a special time as a sign of the creation of the world, it is thus a ceremonial precept... Hence... it is placed among the moral precepts of the Decalogue, insofar as it is moral, not insofar as it is ceremonial. See in the third treatise chapter one on this point discussed from number one to twenty-six four — Whether this precept prescribes the cultus of God, even interior?

Scoletti affirmant, dictum caput 4, punctu 2, n. 8, unde dicunt: teneri fideles ex hoc praecepto ad elicientes actus caritatis et contritionis; sic enim obtinetur animæ sanctificatione, quæ hoc praecepto jubetur. But commonly they deny it, St. Antoninus, p. 2, tit. 9, c. 7, § 2, q. 4, a. 4, concl. 2, dub. 1, 2, c. 35, n. 8 et ex n. 9 cum Cov. etc., ex D. Thomae 1, 2, q. 122, art. 4, ubi docet quod ad interiorum cultus non cogimur sed movemur à Spiritu sancto: Et ideo in tertio praecepto decalogue præcipitur exterior Dei cultus. The same thing is taught by Cateck.

Rom. de tertio praecepto p. 3. n. 1. ubi: Hoc legis præcepto externus cultus ille, qui Deo à nobis debetur, præscribitur. Sanctification of the soul indeed is the end of the precept, but the end of the precept does not fall under the precept, according to the common axiom of theologians, as that same author teaches in II, q. 100, art. 9, both in the text and explicitly at 2: "For it is not the same thing that is the end of the precept and what the precept is given about." Question 3. whether this precept is affirmative or negative?

And it is replied that it is affirmative, insofar as it does not oblige always and to always. Surr. . Leand. Fag. cum . n. 45. contra Caj. et sed hoc negatur.

See Catech. 265. — It is asked whether observance of the Lord's Day is by nature and divine right, or merely by ecclesiastical ordinance? The first opinion asserts that it is divine by nature; because the Lord's Day succeeded in place of the Sabbath, which was instituted by divine law for worshiping God. Thus Abb.

The first opinion asserts that it is divine; because the Lord's Day succeeded the Sabbath, which was instituted by divine law for God. Panorm. at pp. 4, n. 37, and this adheres to Croix 1:3: p. 4, n. 694 with Mar. et . But much more probable and common is the second opinion, that if from the canon law according to the Catech.

Rom. 3, part., n. 19, ubi: Pla cut: am- tem Ecclesiae Dei, ut diei sabbati cultus in Dominicum transferatur diem. The same is taught by St. Thomas, II-II, Question 122, Article 4, Ad 4. The observance of the day of the Lord succeeds the observance of the Sabbath; it is not a commandment of the Law, but an institution of the Church.

And thus the observance of the Lord's Day can be changed and dispensed with by the Church; although in this dispensation it could not be done so that there would be no day set aside specially for divine worship, as Alexander III did in this regard, allowing fish on the Lord's Day according to what is written in canon Licet de feriis: "It is permitted both from the pages of the Old and New Testament to have specifically dedicated the seventh day to such rest, and also to dedicate both that day and other days to the Majesty of the Most High, as well as the feasts of saints; we grant permission so that on the Lord's Days and other feast days (excepting the greater solemnities of the year), if the earth's produce inclines towards capture due to pressing necessity, to intend such capture." They hold this opinion Sotus de Just. lib. 2. quaest. 4. artic. 4. ad 2. Doctor of the ninth title, chapter seven.

Azor, tom. 2. l. 1. c. 2. q. 2. . l. 2. c. 4. n. 8. . l. 5. cap. 2. dub. 4. ex n. 2. . 340. et . n. 38. communiter cum S. Fill. 52. p. 2. n. 45. ac Bell. But a great objection is urged: namely, that the Sabbath precept was certainly natural and moral; for this reason it was numbered among the Decalogue precepts; therefore, Sunday, which has taken the place of the Sabbath, is also by nature or divine right. It is replied that although it is established by divine and natural law to designate some determined time for the worship of God, yet the determination of this worship, and the days on which it was to be offered, was left to the disposition of the Church by Christ: so that then a Pope could decree that observance of the Lord’s Day should last only for certain hours, and that some servile works might be permitted; hence this precept, as regards the exhibition of worship, is indeed divine, but what concerns the determination of worship and time is ecclesiastical.

See chapter thirty-eight and thirty-nine, and at the end of book twenty-three on the third precept. Decal. 266. It is asked whether bishops can

appoint feasts for their own dioceses?

It is evident that they can, according to c. Conquestus, concerning holidays. But it is doubtful from the bull Urb. Eighth: whereupon, when the bishops are admonished by the Lord to abstain from instituting feasts.

The said words are rather more probable as admonitory than as preceptive. See 23. c. 4. punot. 6. §. 4. n. 405. et 406. The greater doubt arises: whether it is required that there be a consensus of the clergy and the people?

It must be affirmed with Azor, etc. n. 408 and 409. ex dict. cap. Conquestus, de fer. However, it is to be noted that it is sufficient if the clergy and the people do not contradict. Therefore, it must be noted what, although the Bishop contradicts them, he is unable to indicate perpetual feasts; yet one or two times, singly, it may still be possible.

But the Fathers say in ibid. n. 410: it suffices by custom alone with the consent of the clergy; but this is contradicted by n. 414 according to ancient law. They nevertheless note that, attentive to the new law, from the bull of Urb. VIII.

All, promulgated in the year 1642, can Bishops institute perpetual feasts without the consent of the people and clergy; thus n. 412. et: 413. cum Bord. But Croix contradicts this, saying that a festival instituted by the Bishop without the consent of either the people or the clergy is not to be observed by the people. Gav.

And indeed it is more probable; for on one hand it is certain from the said chapter Conquestus that a bishop cannot indicate feasts without the consent of the clergy and people: but on the other hand, from the aforementioned bull (according to the words reported therefrom) it is not sufficiently, saltem not well, deduced that this faculty is absolutely conceded to bishops. Whether, however, Bishops can institute feasts in honor of saints only of those who have been beatified? They affirm. Tr. 23. C. 1. P. 6. §. 1. N. 414.

But they themselves ibid. n. 415. deny more truly when . etc. But they deny commonly Fill. and many others when §. 2. n. 417. 267. — It is asked at what time the obligation of the feast day begins? Ang. Verily more probable is it to begin at midnight and continue until another time: such indeed is the current usage of the Roman Church.

It is true, however, that feasts can be instituted even until midday or night. Thus. point 7. no. 424. and. precedent no. 334. Notandum autem, quòd si festum ob diem impeditam transferatur in aliam quoad officium, non transferatur obligatio audiendi Sacrum, et abstinendi à servilibus.

It is common, see n. 426, because such is the common practice of the Church. — Question 7: whether this precept obligates under grave penalty and to what extent it obligates? In response to the first question, the answer is affirmatively, since it was condemned by Innocent. XI. prop. 52. dicens: Præceptum servandi festa non obligat sub mortali, seposito scandalum, si absit contemptus.

The response to the second question is that it obligates one to hear the Sacred Word according to c. Vice illius, de treuga, and c. Si quis, de conserer. Dist. 4. And as for abstaining from servile works according to y. 7 and according to c. 4. It is permitted from the iron.

And this is not merely on Sundays, but also on other feasts. Here it is opportune to advertize, that from the Breviary edited on day 22 according to our Pontificate. Bened.

XIV. Slavery-like work is permitted for the kingdoms of both Sicilies on feast days, except the days of Paschaltide, Resurrection, and Pentecost, and other Lord's days throughout the year, nor are these exempt: the days of Circumcision, Epiphany, Ascension, Body of Christ, and Nativity of the Lord, the days of Purification, Annunciation, Assumption, Nativity, and Conception of B. M. V.

Immaculate; on the feast day of SS. App. [Petri et Pauli, omnium [Sanctorum, ac præcipuorum quorumcumque locorum diaccessus patroni. For other feasts, merely the hearing of the Sacred Word is prescribed. 269. — Whether there is also an obligation to hear the sermon?

It seems to be prescribed thus in c. Sacerdote, de censeer. dist. 4. But respond negatively with Bus. infra 308 and n. 323. and c. 23, dist. 4, penit. 8, a. 434. The Gloss explains the cited text as speaking solely about a perpetual sermon.

And notes 1. 2. c. 46. n. 8: there is prescribed nothing else there than that Bishops and parochial priests on Sundays and more solemn days preach either themselves or through suitable others, and during Advent and Lent at least three days in the week they proclaim the word of God, if they have deemed it fitting to do so. From which words no other obligation is

imposed than upon Bishops and Parishes to preach. Here incidentally it must be noted what is commanded in chapter 5, canon 2, concerning this matter: both bishops and parochial priests are obliged to preach to their people on days of obligation and solemn feasts with these words: All bishops... and other prelates are to preach themselves (unless legitimately hindered), if they have not been impeded lawfully; but if hindered, then through suitable persons... But he who shall neglect this shall incur the severest penalties.

Archipresbyteri quoque, plebem, et quicumque curata animarum obtinent, per seipsos vel alios idoneos, si legitimè impediti fuerint, diebus saltem Dominicis et festis solemnibus plebas sibi commissas pro sua et eorum capacitate praeant solitaribus verbis, docendo ea quae scire omnibus necessarium est ad salutem, annuntiandoque eis cum brevitate et facilitate sermonis vitia qua eos declinare et virtutes quas sectari oporteat. The same is moreover renewed to Bishops in the same council session 24 chapter 4. Herefore I have no doubt with Salm, ibid. n. 136. and 437. and .

He does not offer that which he feels, q. 5, unico, p. 2, in fine, namely, that this precept should not bind so rigorously as to gravely sin the parishes, who sometimes omit preaching to themselves: this is the opinion of session 24 when it treats of this obligation of bishops; it says if they have deemed it necessary thus; and to this interpretation adhere Remac. l. a. et . 9. d. 9. p. 4. n. 5. But well respond . c. n. 136., that said condition refers to a time solely of Advent and Lent, as is evident truly from the context of the council; but, not to other times of the year. However commonly DD. in such a precept admit a small matter; Rome de fourth precept chapter five question six desires that a small matter be only one twelfth part of sermons within a year: but this seems too rigorous; they firmly assert, and do not excuse grave fault parochial priests frequently omitting preaching, whom they seem to excuse sometimes by omitting it themselves intermittedly.

Herefore they seem not unreasonably tenacious. Rome et secus vero, ut ajunt, si omittant per unum integram saneam continuum, aut per tres menses discontinuos in anno. All the more so, because in chapter 2 at the end it is stated that if the parishes themselves, having been admonished by the Bishop, fail to fulfill their duty for a space of three months, they are compelled through censures and the like to perform their office.

From which it seems that in this matter there is greater latitude in its proportionateness. Finally notes Salam. d. n. 438: it is well possible for parishes to conceive and emit substitutes so that they may later supply opportunistically. Bishops, however, although less frequently than parochi,

are bound to hold sermons.... 270:... Quaer. 8. what feasts are they bound to observe?

It is responded that all faithful composed of reason, that is, at the end of seven years. Thus from the common Croix l. 3. p. 1. n. 615. and l. 23. c. 1. p. 9. §. 1. n. 144. against others whose opinions are everywhere rejected. Hence children who before the age of seven have certainly arrived at the use of reason are held to be such that they are considered capable according to Swar: 3. p. t. 3: d: 88: soci: 4: in fine: Nav: in n. 7. l. 7. c. 2. qu. 1. et . n. 145. cum tr. 42. r. 37. who call this opinion more probable (but those after the age of seven are not held to be such, if they still lack the use of reason). Reason, because this law obligates all who reach the age of discretion.

But they do not think immaturally that the opposite sentiment is probable, Ebel de leg. n. 269. c. cum et Pasqualig. ac Croix l. 1. n. 676. cum Burg. Illumined: et Jo. . l. 3. p. 1. n. 615., namque, pueros ante septennium, etiamsi usum rationis acquisierint, non teneri ad leges positivas, quia ista non obligant, nisi secundum communiter contingentia, ut habetur in l. For to those maxims of law where it says: For rather should that law be preferred which frequently and easily occurs, than that which rarely happens; on this account 2. q. 147. art. 4. ad 2. excuses from fasting youths before the age of twenty-one years, even if someone does not require frequent food: Because (as he says) the legislator considers what commonly and frequently occurs in many instances.

Moreover, Santius says, according to Croix l. 6. p. 2. n. 2026, concerning the annual confession precept; but it should be held with those who say, in penit. p. 20. §. 2. n. 2, that there is a common opinion with Sylv. Every person of either sex is commanded in penance and remission that every faithful person, after reaching the age of discretion, be bound to make confession annually. At the age of discretion, it is well explained by the Glossa, namely, when one is capable of deceit.

After seven years, however, boys who have attained a doubt of reason certainly are bound by all laws, because then without doubt presumption from commonly contingent matters is held to be obligation, as Ebel ibid. and d. n. 145. Qui autem simul esset caecus, mutus, et surdus, non teneretur adesse missae, quia non posset praestare moralis assistentiae; secus si tantum fuerit caecus vel surdus. Cross l. 3. p. 1. n. 616.

Are foreigners bound to observe feasts? See what is said above in lib. 4, n. 456, and what is to be said here in lib. 4, n. 332, at the end v. But

moreover. 271. — But moreover, is it permissible to enjoin servile works upon unbelievers during feasts?

He denies it c. 3, § 4, n. 47. But they affirm there [ibid.,] book 4, title 4, chapter 9, note 3. Cross l. 4. n. 579. cum: cùm. y. 42.

DOUBT I. Which works are forbidden by this precept as well as by the Church? What are the works of servility? Is there a double sin in committing an act on a feast day? Which works are not servile? Is it permissible to travel? To carry a burdened cart or plow? To grind? To teach, write, sing, etc., even if done for profit? Is it permissible to transcribe? To paint? To carve and sculpt? Is it permitted for printers to set type and distill? To dine and fish? What are the works of necessity that are desired on feast days? Are sales and contracts permissible? Are markets and fairs permissible? Is it permissible to excommunicate, seal wills, and similar acts? On the feast day are prohibited all servile works, that is, those which revolve around external matters and are mechanical and unliberal; for example, to sew or to fabricate; or which require merely bodily labor and are customarily performed by workers and servants.

Thus commonly the Doctors say. See IV.tr.7.c.2., etc.; there it is to be noted that three kinds of works are commonly attributed to all men. Other are works of the body, which are performed through the body and are immediately ordered to the utility of the body, such as digging, sewing, etc. These are called servile works because they can be done by servants.

Hence is defined the servile work by Ills. apud Croix l. 3. p. 4. n. 574. Action which is immediately directed to the utility of the body rather than to the powers of the soul. Other are works of the soul, which proceed chiefly from the soul, and are directed to cultivating the mind, such as reading, teaching, singing, and striking organs.

And these are called liberalia because they are exercised by the free. Finally, there are others that are intermediate or common, which are exercised promiscuously by both freedmen and slaves, such as traveling, hunting, etc., Chapter 4, note 4. Good doubt 5, question end, page 2, note 6.

Anaclet. . 273. — It is asked here whether those who sin on a feast day transgress this precept? They affirm, S. Bon. Saint Augustine. In third book, chapter four, point fourteen, section four, note two hundred and forty-six and two hundred and forty-seven, because, as they say, sin is opposed to divine worship, which is commanded on the feast day; but the

contrary opinion is more probable and far more common.

Thomas, qui in III Pars Duae, quaestio 5, articulus 5, responsio secunda ad secundum, Glossae, dicenti in capite 43 Lucae, quod lex prohibet in sabbato non hominem curare sed servilia opera facere id est peccatis gravari sic respondit: Opera servilia mystice intelliguntur peccata sed ad litteram dicuntur ad quorum exercitium servos deputatos habemus. Neither does it hinder what the Holy Doctor says in 2. 2. q. 422. art. 4. ad 3., where he states: He acts more contrary to this precept who sins on a festal day than he who performs some licit corporal work. Nam hoc intelligit de fine praecepti, non autem de praecepti obligatione; finis vero praecepti non cadit sub praecepto, ut dictum est n. 264 ex eodem divo Thoma. 274. — « 4.

It is irrelevant to the reason of servile work whether it is done for profit or for recreation: whether for this intention, that intention, better, worse, or dishonorable. Cajet. It stands.

» 2. It is also irrelevant whether it occurs with weariness and labor, » either if it does or if it does not; whether it happens in a brief or long time, etc., because none of these changes the nature of the work. 3. Etiam pertinacia est, sive fiat cum defatigatione et labore, » sive non; sive brevi, sive longo tempore, etc., quia nihil horum mutat naturam operis.

Servile non est, idemque nec prohibitum, in festo ludere, cho- reas ducere, instrumenta musica pulsare, iter facere pedibus, equo, curru, vel navi: unde etiam ad haec necessaria sunt licita. 43. Tole. et 275. — Whether it is lawful to journey on foot, by horse, or in a carriage on a festal day? They deny.

Sylv. etc. It must be affirmed from common authority with Bus. . praec. q. 9. n. 8. . 404. et . 22. c. 4. punct. 44. §. 3. n. 239. And the opposite judgment is now to be abandoned as outdated, well said in question 4. Whether, however, it is permissible to use a book carried by men?

Croix denies it in his third book, fourth chapter, note 577. Affirmat. But in this I say that there should be observed the custom of places, which now prevails in the city of Neapolis, and it excuses from sin, as Mazzotta rightly points out in 3rd precept, chapter 4, §4, 276. — « 4.

A servile novelty is to lead oxen without burden, since it is "to walk an extra mile," as stated in n. 470. To lead, however, beasts of burden, such as a chariot or a ship laden with goods, is servile. » » "A grave question arises:

is it permissible to lead carts or laden beasts on all days of fasting?"

The sentence is: "Tripæx est sententia." Translation: "Tripæx is the sentence."

"The first opinion holds that this is of itself a work of servitude, with precise labor." Thus with God: q. un. p. 2. n. 25. cum Reg. et S. Anton. Nev.

Obj and loc. cit. n. 242. "The condemned sentence holds that this is not allowed under grave necessity, but neither absolutely nor by itself, but rather on account of the labor involved, if the labor were grave in imposing or removing burdens: similarly, if the labor were moderate." Thus Croia. L. 3. p. 4. n. 578. 4. c. 3. §. 4. n. 42. when in L. 5. c. 2. dub. 7. n. 40. ibidem at the end.

Elbed concerning the third precept, number 464. The third opinion will be approved today at least, which they hold: Article 9, Number 9; Question 4, Number 243, along with others, considers it permissible to incur a penalty, not merely to continue an already begun work, but also to undertake one anew. Reason, because in such labor many do not expend notable time: and if at any time it is notable, it is excused either on account of the avoidance of a grave damage, or for public utility, or finally because there is present universal solicitude, which to be present he justly asserts; Mazz.; the same he says about sailors. 277. — But may grinding be done on feast days?

It is conceded by Sanctæ Cons. ibid., cap. 5, d. 43, that if it be grinding which is performed by water or wind; but not if it be done by beasts, in which there is great labor and occupation required. From which doctrine sufficiently probablistically they infer and Croia n. 578., that when cooperation and application of man is small, it is not illicit, at least gravely, even if one grinds with beasts. Whether, however, it be licit to shoe horses for the purpose of their journeying?

See doubt following. II. n. 300. 278. — "5. Item, nec servile est, siru gratis, sive pro pretio, doctre, studio studere, scribere, transcribere, et secundum quosdam ut Medin.

"Lopez and Armilla, whose opinion he considers probable, against Fill." Azor et alios multos, pingere, etiam coloribus (nam de rudibus lineam nitis plerique concedunt); tenere tamen colores, et non pingere sed tingere, ut per verbum gratia colorare asseres vel pannos, dealbare parietes illiberale

est. Here are many things to be distinguished: Question 1. Whether teaching, writing, playing, singing, etc., are servile acts if done for these reasons?

They affirm, in tractatus 23, caput 4, punctum 42, nota 255 et 256, that although such actions are liberal, they nevertheless become servile from profit. But it must be held opposite to this according to S. 71, 2, 2, q. 422, art. 4, ad 3, with Sot. . et . n. 257. Reason, because the intention of the agent cannot change the work. 279. — Question 2: whether copying is a servile work?

They affirm Caj., ibidem n. 264, because they say that transcribing is not an act of the mind, since many people also transcribe things which they do not understand; but they deny it most commonly and more probabiliy. 399 q. 4 resp. 1 n. 262 cum 1 n. 3 cum : and therefore they note it from n. 282 cum . Sayers and many others against. 280. — Question 3. an pingere sit opus servile? The first proposition denies with Lopez and Med.

Ang. Siv. Sayr.

Armilla, Rosell. . ibid. punct. 41. §. 3. n. 230. et apud Bus. et . At least if it is for the cause of recreation, Azor admits that it is not servile, they state in Regulation, question unity, part two, number twenty-five. He calls this opinion very probable.

Nevertheless, the more common opinion holds that painting is a servile task, because it cannot be called an action of a liberal art, since it does not aim at the mind's instruction, as Scripture does, but only at the representation of images of things. Then, because painting is most similar to sculpture and incising, which are from common servitude. Thus: n. 231. Of Cajetan. Although his objections are not obstructed, c. 2. n. 3. 9. a. 4. n. 4. 395. q. 4.

Anacl. tr. 10. q. 2. . 4. c. 3. §. 4. n. 8. cum Sa, Pelliz. et alio. Reason, because painting requires material operation, yet it does not seem to be properly called servile action; rather, it seems more appropriately termed liberal: for just as Scripture expresses internal concepts, so too does painting express images of things, as Castracani says: and/or, as he himself states. It cannot be denied that the aforementioned opinion is sufficiently probable, as Mazzotta rightly states: for even though it does not follow with certainty that painting is a liberal work, nor indeed is it certain that it is servile; yet it seems to be something that must be held true, so that it could be said to be prohibited.

For a deed seems more probable, at least medium in nature, and common to both servants and freemen; for we often observe noble men without shame to learn and practice this operation of painting; for works being common to servants and freemen are not called servile. At least, as it is said ante.: non debent dimit- tendi sine absolutione, qui hanc opinionem, ut probabilem sequuntur. 284. — Communiter autem admittunt Sporer tr. 3. in Mazz. et alii apud : hæc enim (ait . Excusant etiam Azor, Fill.

Sylv. et n. 25. in fine puellas acu pingentes, ut addiscant; cum hic n. 283. in fine. The art of sculpture nevertheless is commonly counted among mechanical arts, at least in the estimation of men. See ibid., n. 10, 282. – « 6.

It seems that letter arrangers in printing presses can also be excused when they place the letters after divine worship and neglect the penance, as Escob says. E. 5. c. 4. etc. 7.

It also excuses distillation, which rather comes about through experience and skill than through duty and art. It admits her, Croix n. 578, if the application be small. Moreover, on account of the same reason, may wheat be winnowed by hand? It brings about doubt at the end.

Moreover, P. Michael, apud . 408., permits light labors to be performed in order to avoid idleness, such as pruning roses, peeling apples, etc. But rather it is thought that a greater space of time should be required for heavier matters. Some servants do not think it wrong (others hold the contrary opinion and excuse it on account of custom, to avoid idleness and other worse things). » Granat. 2. 2. c. 3. t. 12. d. 4. sect. 7. n. 65. To hunt, to serve in military capacity, to fence, to fish (at least for recreation in rivers), and similar activities: yet fishing ought nevertheless to be moderate.

See transtlation 27, chapter 9, question 12. Bonaventurae, dissertationis 5., quaestio 1., pars 2., numerus 25. Escob. qui docet laboriosam, et ex officio non licere.

Similarly some excuse maidens for engaging in needlework to ward off idleness and wasting time in play, Arm. Azor, t. 6. r. 15. et p. 4. tr. 4. r. 92. It is asked whether hunting, trapping, and fishing are forbidden works on feast days?

There are two opinions present. The first opinion affirms this, because they

say that such activities are servile works, especially if performed for gain, as in the case of Sylo. The Angel. tr. 23. c. 4. punct. 14. §. 3. n. 234.

Nevertheless, the second opinion is more probable and more common, denying that they are prohibited even if they are for the sake of profit; either because they are not servile works, as stated in n. 4. . 402. . l. 5. c. 2. d. 14. et 15. Navar. Med.

Granad. n. 15. cum . etc. now, understand this: otherwise it would appear vainly that the Pontiff dispensed in fishing for baleen in c. 3 de feris. 284. — « Resp. 2. Certain non-servile works are forbidden besides these, namely the forensic ones, such as markets, pleas, judgment to death, or penalty, and all the noise of judicial proceedings, that is, actions which pertain to the decision of causes, whether civil, or criminal, whether secular, or ecclesiastical. Thus common.

DD. from c. 2. of beasts. Whereupon it is resolved: “4.”

On festal days it is not permissible to cite witnesses, bring witnesses, that is, demand a judicial oath, produce, or enforce a sentence, which, if violated, becomes void. See 4. t. 7. c. 2. n. 7. The giving of a judicial oath for temporal matters is prohibited on feast days, as stated in S. Th. 2. 2. q. 89. art. 10.

But it is permissible to give an oath to inquisitors, and also oaths by which contracts of promise are confirmed on a feast day. . 2. n. 15. The formation of a process, the citation of a party, and the pronouncement or execution of a sentence are also prohibited; unless necessity or piety otherwise require, according to c. ult. de feris 285. — « 2. It is not lawful to buy and sell things that are not necessary, nor to negotiate publicly or privately contracts of purchase, hire, exchange, etc., (unless they are excused by custom or other just causes), because they are understood under the name of merchandise, which is prohibited in c. 1 de feris, as Bonaventure teaches in c. 10 q. 2 n. 180.

"(See next number in sequence, vol." And as for the market fairs: 286. — Universal market fairs are now permitted by custom, and in some places private market fairs are also allowed in any given week, according to . 9. art. 2. n. 2. cum . tr. 23. e. 1. punct. 43. §. 4. n. 269. et 270. and the same source. But purchases of merchandise are certainly forbidden by canon law, as stated in n. 3, etc., according to n. 272.

Where there is contrary custom, excuses are made: Sanchez and . For

custom itself (says Sanchez) in this respects greatly abolishes the law. Hence they note n. 273: it is permitted to sell beverages and foodstuffs on feast days, even though it may be for gluttony, according to Cajetan and Buscema, following the decree.

Sacred Texts, ibid., n. 279. Likewise, sell shoes, candles, and similar items, whose price has already been estimated. Likewise it is forbidden to sell houses, horses, goods, even present ones, and although much time is spent in this; first because thus the usage of the fearful is satisfied; secondly because the Church has only prohibited sales in public shops on account of scandal (1). Thus from n. 275 and 276 with . . But are transactions also forbidden by name, including leases, negotiations, and similar things?

It affirms Bus. with Tab. loc. cit. c. 2. dub. 26. n. 3. . 2. n. 4. Sam. ibid. c. 1. n. 277. cum . Azer et Leand.

Because such is the custom of the wise, which seems to derogate from the decrees of St. Pope Gregory V. When first, in the year 1566, and according to the Sacred text there cited number 279. Hence they say that all contracts are legitimate if they are made without instruments and without the authority of a judge; damn it as mortal sin; but since article 2, n. 4 permits the making of wills, the celebration of contracts, and other similar acts which do not require judicial noise; and indeed, everywhere among us on festive occasions instruments are stipulated; although notaries sometimes seek from the General Ordinary a license for this, which is generally commonly granted. 287.—« 3.

It is permitted to excommunicate, to grant dispensations, to deprive a judge of authority privately, to inform an advocate, to confer councils, to elect, and so forth, because they do not require judicial clamor. See Bonaventurae ibidem » (Est communis apud 9. art. 2. n. 4. It is also licit to confer benefits, and even to exercise jurisdiction without judicial noise; likewise to emancipate, and even to appeal. .) DUBIUM II.

Which causes excuse from the observance of feasts, for which forbidden works may be licit? 188 Who can grant dispensation to labor? 189 Since those who labor are excused by custom? 190 Are those who turn the grain, etc., and those who play flutes and harps? And what suffices for the knowledge of custom? 191 How excuseth piety? 192 Is it lawful to defile a temple on a feast day, to adorn altars, to erect a tomb, etc.? 193 Is it lawful to labor in order to assist the poor, or out of pious concern for someone else? 194 How excuseth charity towards one's neighbor? 195 How excuseth necessity? 196 Are servants and those compelled by their

master to labor excused? 197 Are the poor excused when they mend clothes, etc.? 198 Is it lawful on a feast day to cook food, kill animals, prepare pastries, and gather fruits? 199 Is it lawful to bake bread? (1) In 6. n. 18. is added: « Item permittere DD. etiam mercatoribus vendere aliquid clausis januis, cum emptores pro tunc iis valde indigerent. Can one cure a wound, temper iron, bake lime, melt glass, etc.? And is it permissible to shoe horses for great profit?

And is it permissible to omit Sacred duties on that account? Is it done to avoid idleness? Are those who mend roads and finish clothes by sewing excused if they work on a feast day? How is public utility excused for causing disturbance? How is the division of materials excused? (See also on this matter book 6, n. 346.) Would it be grievously sinful to command six servants to labor for an hour? From what kind of material does the gravity of the matter arise in legal matters? These especially are seven: The first is the dispensation of a Bishop, or one having episcopal power equivalent to that of a Bishop, with regard to superiors of religious orders; nay, and also for parishes when easy access to the Bishop is not given. n. 2. n. 20. 288. — In the precept to abstain from servile work, the Supreme Pontiff can dispense first, as supreme legislator and pastor, in all feasts, and for the whole Church. Secondo, Episcopus in sua diecesi; etiam capita lunae, sede vacante; necnon prælati regulares erga suos religiosos subditos, et eorum domesticos.

And it should be noted that bishops can also dispense even on common feasts: nevertheless, it should be noted that, if they dispense in these without just cause, they gravely sin, and the dispensation is invalid; furthermore, if they dispense in synodal or particular local feasts. Thirdly, the parish priest can dispense when his subject is unable to approach the Bishop but only temporarily, and for some particular case. Thus it is stated in lib. 5, c. 2, d. 20, n. 2: Azor, cap. 23, punct. 14, § 4, n. 352, et 2, n. 13, who notes that the general vicar can also dispense, but only by special mandate; for to him are not committed those things which involve grace, as he says in 4, § 2, n. 3 with Merolli. Moreover, even when the bishop is present, parishes can dispense from minor and frequent necessities according to custom; yet only in matters wherein dispensation has been introduced by custom itself, such as in fasting and in vacation from servile works on feasts.

Thus cited and [it is] chapter 5, section 7, note 56 with Thomas and John on law chapter 4, note 349, with tractate 4, question 4, article 2, chapter 2, and chapter 5, paragraph 4, section 2, note 40 commend. He considers however, praec. n. 414, that is to say, if he does not have a delegation. Croix n. 584. cum. . 289. — "Secunda, consuetudo; nam sic licita sunt

nundina illa, " in festis passim haberi solita, et praeparationes deliciarum non necessariarum, ut cupediarum, placentarum, et similium ciborum artifis, ciasorum, item emptiones, et venditiones rerum parvi momenti.

Bon. - l. c. . c. » 290: — Thrice from custom . 23. c. 1. punct. 44. §. 3. n.; 341, and n. 42. excuse those who turn in the area or separate standing grain, and those who water gardeners with growing vegetables. Fernandes autem apud . dici posse de sutoribus calceantibus novos calceos). Notat autem dubitent de tali consuetudine approbata, de qua pariter dubitant 27 n 4 et n 336 et 337 cum Cajetano et Colliget 4. Mazzot. tom. 1. c. 2.

Croix lib. 3. p. 1. n. 594. . 417. n. 43. et c. eos excusari posse, vel ex parvitate materiae, scilicet si unum vel alterum tondeant, vel ex necessitate rusticorum, quibus tantum diebus festis conceditur ut tondeantur. And they grant this, n. 334, when not only, as it admits when rustics reside elsewhere, do they allow it. They also excuse them, and . and .

Fern. ibidem et Croix cum hoc; nam qui omnino id permittit, Notandum autem circa consuetudinem illam, quae dicitur 2 n. 8: scilicet, quod ad excusandum sufficit probabile consuetudo: sufficit enim, ut dicunt c. 6 punct. 3 § 2 n. 48. Salas, de tertio praecipuente capitulum secundo, quod quando dubium circa consuetudinem habet praeceptum, unde petenda est dispensatio; aliter si probabile sit existere consuetudinem. 291. — Tertia, pietas in Deum per quam licita sunt opera, quae proxime (non quae remotè) spectant ad cultum Dei: ut pulsare campanias, circumferre imagines vel crucem in supplicatione. But if altars and similar things, which do not pertain to the very service, are adorned or revered without reason on a feast day, they are considered venial; here it is asked whether it is permissible on a festival day to reverence the temple, offer victims, adorn altars or churches with carpets, set up tables necessary for festivity, and similar things?

Three are the opinions. The first sentence is as follows: This however is contrary to common opinion. The following sentence, according to 2. n. 40. Croix n. 586. and n. 3., says: non esse servilia; sed si possent exprimi die praecedenti, esset veniale transferre illa ad diem festum.

The third sentiment holds sufficiently probable that even on a feast day this ought not to be forbidden: firstly because it is a common custom; secondly because such works in themselves closely concur with divine worship. Thus translated text 23, chapter 1, point 41, section 4, note 254 with subscript. They note, however, in the aforementioned place, that it

would be a grave sin to knowingly prepare tables on feast days for the procession; but if they are not prepared beforehand, they lawfully may be done on the feast day: and the same view is held by Mazzatt at loc. cit. 293. — It is asked, whether out of mere piety, without actual necessity, it is lawful to work on feasts, namely, to sew clothes for the poor, till the fields of the Church, hew stones and timber for its building, and whitewash the temple walls?

They affirm. Feric, n. 9. 28. and 32. Feric, n. 18. and 37. Piety, Sa, v.

Fest. n. 80. Fill. tr. 27. n. 156. item Perez, Sylv. . apud. . lib. 5. cap. 2. dub. 23. Nevertheless, Sylv. limits it in a certain way so that it is not on days of the Lord and more solemn feast days, nor even until the most fatiguing time.

They are moved by the fact that according to c. Conquestus, concerning beasts, judicial penalties may be remitted if necessity demands or piety advises; therefore similarly they say that servile duties may also be excused. And this reason does not seem to be contemptible, since judicial and servile matters are forbidden by the same ecclesiastical law as stated above in n. 265; but where the same reasoning applies equally, so too does the disposition of the law, as we have commonly said regarding the law lib. 1, n. 106, at the end. They, however, deny that this is permitted except where necessity urges an act, or at least where permission intervenes from the Bishop; because such works in themselves are servile, and only remotely contribute to divine worship.

Judicialia vero, ut supra, de se non sunt servilia, et ideo permitteantur ob pietyatem. The precept of worshiping God and abstaining from servile works is of a higher order than works of piety. This second sentiment seems to me certainly more probable both with c. n. 3. d. unic. p. 14. n. 2. n. 6. and with Suarez, Cajetan, etc., comm.

Herein is due number 2, chapter 8. Sparr tract. 3. cap. 4. n. 53. q. 5. et punct. 14. §. 4. n. 357. Only to labor is licit when a poor man gravely lacks by his act; or (as Rone and the Congregation of Cardinals add) so much does he lack, that unless he labors on feast days he would not be able to meet his own necessities, and furthermore himself could not pay the wages of workers. The same holds for Escoò in his Third Prelation, saying that it is permissible to build a church, cultivate its fields, etc., if itself it be so destitute as to be unable otherwise to provide for itself.

He notes, however, with Fag., that it is not sufficient for necessity to be

common, but rather it is required that the particular poverty in some specific sphere or grave and certain necessity in some universality be known. Speaking about such holy places, article 44, section 4, note 203, says thus: Since almost all churches and monasteries now flourish in these times: from this provision, whether for hospitals, brotherhoods, or similar institutions, men may lawfully labor in building temples, reaping grain, cultivating fields, etc. Haec cum Bonac. Truly.

Caj. 294. — "Quarta, charitas erga proximum; per quam liciti sunt, et possint actus judiciales pauperum orphanorum, viduarum et miserabilium personarum ne expensis graventur." In like manner, disputes of rustic people in small towns can also be heard on other days if they are unable to attend on those days. Likewise it is permissible to assist paupers and infirm persons, who are then in want.

Likewise it is permissible to buy and sell with those rustics who are hindered on other days. n. 7. See 4. r. 34. 395. — "Quinta, necessitas propria, vel aliena corporis, vel animae; si nimirum sine gravi incommodo, aut detrimento aliquod omitti non possit."

» (. 2. q. 422. art. 4. generaliter excusat, qui laboret ad vitandum damnum bonorum.) Quomodo excusantur la- » bora. « Judgments which require speed: for example, if a thief were a fugitive, he would not be captured unless then. Slaves and maidservants are compelled by masters to labor, nor should they refuse: but if this nevertheless frequently happens, they ought to desert them. 296. — Servants, being compelled by masters to work on feast days, unless it be in contempt of the feast, are made to sweat with salt through fear of great anger from the master or great inconvenience; for example, if they fear that they will not be dismissed so as to be able immediately or easily to find another master.

Thus Croix with q. 5. Elbet de tertio praemio n. 377. 2. n. 9. 23. c. 4. puno. 44. §. 3. n. 339. cum ibid. n. 340. Rone. ibid. contra Bus. ipsos statim teneri dominos deserere; nisi sint addiscentes vel obligati ad familiarum usque ad certum tempus, si hi vere grave damnum patenter reperiuntur.

The same is said of sons or wives who are compelled to labor by men, if they cannot refuse without fear of great damage or grave indignation, as it is cited in the aforementioned text. AA. and Mazzott. 297. — "3. They are excused and similar ones, stripping off their clothes: "for on other days they will not be able to do this.

“(when.” The poor, who cannot provide for themselves and their own, working privately: without scandal, especially when many feast days occur consecutively. » (with . 5. c. 2. dub. 48. n. 45. and . §. 2. n. 324. with Azor, . etc.): 198. — « 5.

Excuses are made for coquí and cuñnarli. It is certain that co-querere eibos is licit; as DD: commonly with S: Th. 2-2, q. 122, art. 4., ad 4 and 5. And concerning the preparation of foods, it is also licit to kill animals; and to exercise this if previously it could not be conveniently done, as often happens in large cities; but not in small places, unless it be during the summer season or when there are many feasts. 48. n. 6. with n. 326. with : It is also licit for bakers to make pastries, at least by custom, they say, n. 327. with Sot. et 14., unless they be made only for one’s own proper food on that day; or when there would be need of them for public abundance, as he says.

Whether it is permissible to prepare foods for enjoyment, such as those sweetened with sugar, etc., they deny this unless (as they say) either an unexpected special occasion arises inviting friends, or unless, adds n. 9, these kinds of foods, even though superfluous and prepared for enjoyment, are excused by custom; and he considers it rightly probable according to number 6 verse 2 with Azorius and Mazzotta c. 2. Let it also be permitted by consuetude Mazzotta ibid. and Pag. 22. to gather fruits on a feast day, even those that are not necessary for the use of the day, so that they may be kept in better condition. And this is more readily permitted if there be a danger that they may be stolen from others, or contaminated by rain; hence the custom has been received in many places to collect olives, chestnuts, and other wild fruits on feast days.

It is certain that on feast days it is permitted to perform works which are necessary for daily use, such as threshing grain, cleaning the house, or washing clothes and kitchen utensils, and similar tasks. Eliet n. 394. cum Sporer n. 42. Henry, etc., commonly. "6.

Let there be multiplied priests, laymen, and similar ones in populous cities; and let them gather in crowds at feasts. » (He says in Decretum praecipue articulus 4. You will collect 4 with Pontas and Juenin, well excused bakers; and sellers of goods, if otherwise they cannot sustain themselves and their own; or, if they do not labor, they will bring about a grave inconvenience to others. — Whether it is permissible to bake and cook bread?

As regards bakers and furnace-keepers, he says that they cannot be

excused; if they are able to bake the bread on the preceding day; and the same is said by Sanchez, dist. 18, num. 3., and Bonacina, punct. 3., n. 9.; but they are excused if a festival crowd intervenes, or the multitude of buyers, or the utility of the people. However, it is probabified tr. 23. c. 4. punct. 14. §. 2. n. 328. with Sa, Azor, Pasqualig., because there are always some causes of excuse present; and also because the daily bread is more apt for sustenance; and other minor necessities thereof would not have been sufficiently efficacious to move the people; and also because a custom exists in Rome, and it might be believed that it could be said everywhere with Sporer n. 55. He has regarding those who grind flour; but regarding others, whether there is a custom permitting the grinding of bread?

It justly doubts unless many feasts concur; or unless cooked bread be not sufficiently apt; or finally unless it be necessary for the use of that day, as I said concerning pastilles, because then it is reduced to the preparation of one's own food. Thus also 41. when from butchers you see the aforesaid stated in nos. 298. 390. — « 7. Surgeons, apothecaries». 8.

Smelters of iron and vitriol, bakers of sides, calciners of lime, etc., and whoever, whose work once begun cannot be interrupted without damage. It is licit to cook lime, glass, and soap, because such cooking requires many days; and this can sometimes be begun on a feast day in order to avoid great damage, as Sot. ibid. § 3. n. 344. It is likewise lawful to shoe horses that are traveling, or those which are about to set out on their journey at high mass, or those going forth into the field to labor; for otherwise they would suffer great damage.

It is common, n. 346. with Sot. . Likewise also to repair roads, bridges, as Massot. ibid. 9. The grinders are excused (See supra doubt 1, n. 277.), and those suspended in the wind mills. 40. Fishers of balecum, thymepermum, etc., who at a certain time of the year alone can possess this.

Here is sought henceforth 4: whether there is an occasion for seeking great profit by employing servants on a feast day? The probable opinion is divided. The first opinion affirms as Cajetan holds in his Summa, chapter v.

Festor. violation, Angel. v. Friday number 34. Armilla v.

Feast, n. 20. n. 546. v. Fourth. Book 5. Chapter 2. Question 49. With Paluc. Rosell. and Zachar. lib. 3. p. 4. num. 588.

Renzi from 2. 2. 3. . prece. c. 4. n. 54. 2. . 402. n. 15. n. 9. in fin. 3. 2. n. 80. cap. Sayr. et aliis secundum n. 342. Bado, qui amissio magni lucri (scilicet extraordinarii, non autem mercedis dignae) idem est ac magnum pati damnum; ideo in c. Licet de feris Alpandier. III. It is said to have been dispensed, so that they might be able to take possession on Dominical days and others, sufficiently excepted, more strict (but not under mortal sin, as he notes), And this Bus. here Gob.

Caj. . rightly extend to more fish-like thyme. Nevertheless, the second opinion, which is held in question 5, response 44, and note 343; in that very same thing truly coincides: to lose something and to prohibit acquiring what cannot be acquired further: as it is said namely in C. maj. de saet., a great profit ceasing through grave damage is equated to it. It seems advisable, at least in such a circumstance, to say that the human precept of the feast does not obligate with such a great loss, as it is said: "Nonetheless, it does not deny excusing a great hoped-for profit, if it were such that one could provide for many necessities and themselves, and their own, from it."

By the same reason they probably say that 4. cap. 2. §. 2. n. 7. and Mazzotti on the third precept, chapter 3. §. 2. oppose to 23. c. 1. punct. 14. §. 3. n. 345, that even the excusing of the loss of notable sacred profit from hearing is justified. See below doubt 5, note 538. However, they justly condemn ibid. 3. n. 9. (and this is agreed upon by Vica q. 4. a. 3. n. 42), that someone may profitably set out on Saturday to go hunting in a distant wood, although there he cannot hear mass on the day of the Lord; for commonly (he says) .

Whoever, however, went hunting on the day of Jupiter, is commonly excused according to . cum . et 302. — It is asked whether the reason for avoiding idleness exceeds? Adsumt tres sententiae. The first proposition completely denies this, because a pious purpose for avoiding idleness cannot make servile work be considered as such: yet this reason does not persuade, for although a just cause may not regard the nature of the work, it still excuses.

Hence the second opinion, which Sa and Sylo hold, and which is found in 4. part. 7. cap. 4. n. 2. at the end, and Mazz. with Pellix. and Burgh. according to. Croix excuses those who, unless they labor, would find themselves in a probable danger of sinning through idleness. Si autem, dicunt, excusat periculum damni temporali, tanto magis debet excusare periculum spirituali.

They admit this sentence: §. 9. n. 14. . 2. n. 40. a. 42. Cross d. n. 586. Zacharias, lib. 3, pars 1, n. 580: seulement dans le cas où la tentation pressante ne pouvait être vaincue autrement que par le travail.

And thus indeed it truly speaks: Chapter 34 rarely does such a necessity for laboring occur; and this is the third opinion to which I will subject the libertines. 303. — « 41. Restorers of fountains, bridges, public roads, and similar things are excused which do not tolerate delay. 42. Tailors in necessary works, such as funerals, weddings, etc., if it cannot be otherwise done, so that they may satisfy [the needs].

Tailors who on weekdays were unable to mend their clothes may finish them on feast days, out of urgent necessity, such as for funerals or weddings, etc.; for instance (it is said by Salem), if a stranger lacks decent clothing: for the dignity of this status excuses them. Thus 337. with n. 2., and n. 7., and Croix n. 562. with . if others expect for use the promised clothes: but it should be understood (says good Croix) that if otherwise the tailors would suffer a great inconvenience. They also say in Salem, id. de sutoribus cum . 42. et Mazz. who excuse those wearing new shoes on account of an introduced custom. • 43.

Item concerning husbandmen, in order to avoid damage, those who labor in the fields should gather the grain or hay, if a threatening rain is expected. (Croix n. 556.) 44. Finally, merchants are also excused who sell certain goods with their shops closed, since they presuppose that at that time such goods are necessary in the marketplaces and cannot always be conveniently obtained elsewhere. » (See above n. 286.) Above mentioned see c. 304. — Sixth, utility, not simply necessary, but for common joy or splendor: thus it is permissible to labor in the advent or rising of a prince, so that theaters, fires, clothes, etc., may be completed. Although Suarez rightly says that one should ask forgiveness from the shepherds in this case.

See Bon. It is certain that it is licit for a public cause and on account of a good necessity or festivity, such as for the occasion of a prince's victory, arrival, or birth, to construct garments, theaters, and similar things. These things can also be done for the sake of reciting convenience.

The saints in doubt 18 months 27 days 23 hours 4 minutes punctum 14 sexies 3 nights 367 who by fortiori inference extend to more vehement movements of oxen; provided that such things could not be definitely prevented on that day. Reason, because such signs of festivity are habitually necessary for the republic: and hence they are permitted by

reason of custom. For these reasons, as it is noted.

Thus Mazz. d. c. 2 permits pariably the more conspicuous theater, clothes of the servants, etc., causes of nuptials, if they were not completed the day before for some reason. 305. — "Seventh, it also excuses, at least from a grave sin, the insignificance of the work or time. Whereby a single hour does not seem grievous to labor, as Saar states in book 2 on feasts, chapter 32, namely, that it is excessively servile and wearisome for the body. "Rather, it seems harsh to condemn a mortal sin if one devotes two or three hours."

See Filius tractatus 27. o. » Article 4. Question 4. Number 105. It is asked what kind of gravity is present in this matter.

Some canonists, according to . 342, posit that a third part of the day is gravely material; but this opinion is commonly rejected. Others, on the contrary, very rigorously, like Azor and Bon., set one hour; and these are opposed, especially, as Bus. notes. Others set two hours as the material gravity, as q. 5, r. 5, with . et . n. 343, and Et hanc cum March., which they call the common opinion.

Hanno idem sentit apud conclusores in fine quæres: si labor sit valdè servilis, ut cædere lapides, fodere terram, etc.; in aliis autem requirit tres horas. Others, in general terms speaking, require for a serious matter (and not improbably) at least two hours, and somewhat more, as Bassæus asserts, and as . does. Leand.

Valleius ibidem n. 342. in fine et apices. Cross d. l. cum §. 2. n. 4., qui dicit, esse hanc sententiam nostram jam receptam. Others, like March., require three hours (4), which Mazzott. also admits, if some necessity or other cause were to concur, that by itself is not sufficient for excusing.

Bus., pariter cum Fill., dicit durari damnare laborem peccati mortalis duarum vel trium horarum. Croix, lib. 3., p. 4., n. 594., consensit et concludit quod communior et probabilior nunc est sententia non esse peccatum mortale nisi laboretur saltem multum ultra duas horas, putata duae horae cum dimidia. Quæritur an peccet graviter qui die festo mandat sex famulis ut laborent per horam. Coninch. in Clypeo, tom. 3., art. 5., affirmat et pariter non negat Arsdek cujus opinionem dicit probabiliorem Croix c. 584. casu quo dominus mandat ut laborent successivè nam si eodem tempore consentiunt omnes cum n. 580. non esse peccatum mortale. However, the more probable and far more common opinion is that in either case it is not mortal, as stated in 2. n. 14 with Bonaventure

4. c. 4. n. 42 q. 5 at the end; and in n. 317 with the Ratio, because the works of servants are not united into one: nor can the lord sin more than the servants themselves, who would only slightly sin in this, since each would only slightly fail in their obligation to rest for God. (1) "But this opinion," says St. Alphonsus in 6. n. 18, is too lax.

» Edid. It would certainly be so if the master commanded a servant to labor many times over on a feast day until heavy matter was accomplished. 307. — "In judicial matters, however, the quantity of work is not to be judged by the amount of time, but by the quality of the work, warns Escob." E. 5. c. 3. n. 14. eo Palao tib. 1. tract. 9. d. 2. p. 3. n. 4.

Thus a grave sin is asserted to be the sale of a very great thing at a moment of great solemnity, even though it were for a brief time. Understand this (according to what has been said above), except for custom or necessity. The doubt mentioned is number two hundred and eighty-six at the end. QUESTION III.

What works are prescribed on feast days? How is the hearing of a sermon and the mass to be ordered on feast days? And to the parish priests, that they preach? Remissive to n. 269. 309 Whether recitation under the effect of mass satisfies, etc. Whether one who begins mass? 310 What omission is grave in hearing sacred? 311 Is it permitted to hear successively two half masses? 312 From what place can mass be heard? 313 Is internal attention required for hearing mass? 314 Whether reciting confession of sins satisfies temporally during mass? 315 Is one considered patient? 316 Whether one who is sleeping? 317 Whether one who is talking, turning around, or reclining, walking about, or gathering elected signs, censes, etc.? 318 In a great church should mass be heard while hearing? 319 What satisfaction does hearing mass in private provide?

Does gazing at those on the shore, or in camps, suffice? 268. — « Resp. praecipitur 4. » The hearing of a sermon is not, however, under mortal sin, except insofar as each one is bound to learn what is necessary for salvation. See chapter 4 on reform.

The faithful are bound by the law of charity (if they cannot conveniently add it to others) under a grave sin of preaching, or rather catechesis is of interest. Bonaventurae, distinctorum secundi in praemissis, numerus secundus, nomen viginti octo, addens: In hoc casu etiam concionem preferendum esse missae. It is commanded obiter by a special precept, obligating under mortal sin, to hear mass, that is, moral and human assistance, or presence at it to interest oneself.

It is common from the chapter that all faithful persons are bound by this precept, and from thence. Massa, consequens, distinguitur 4. contra Anglios et Roselium: qui si una vel duobus diebus negligere, dicuntur esse veniale. » This proposition is therefore condemned by Innocent.

XI propositione 52.) "Obligat hoc praeceptum omnibus festis omnes baptizatos usum rationis habentes: non autem infantes, amentes, vel catechumenos." The reason for the first part is because it is universal. The reason for the second [proposition] is, because they cannot have assistance from humanity.

The reason for the third is, because they are not subjects of the Church. C. Lugo dicit in secunda sectione prima et secunda ex Navarra: «Unde resolvtes: 1. There is no obligation to hear the sermon in one's own parish: firstly, because the Doctors do not recognize any such precept from chapter 4 of reference, which says that it should be held where conveniently possible; secondly, because if any obligation there was, it has been derogated by the privileges of the Regulars and by general custom contrary thereto.

Suarez refers to the matter in book 2, chapter 16. Azor, Navar. verb. Prad. . 2. c. 1. d. 4.

See 4. But brothers, preachers and minors, and those who share in their privileges, when preaching in their own churches at any time of the year, can grant 48 years and 220 days of indulgence to their hearers by virtue of t. 4. r. 22. ex et dicenda apud) « 2. There is no obligation to hear mass on the fifth and sixth weekdays of the greater week, nor on the days of Rogation.

Azor, Henric. 88. sectio 5. « 3. On the feast day of Christ's Nativity, let the young hear but one mass only. . Fill. 309. — « 4. He has satisfied who recites the canonical hours under the obligation of mass, or performs the penance imposed in confession, according to Cajetan.

Syl. Ang. Armill. teach that etc. The reason is, because two precepts can be fulfilled simultaneously, » (Idem sense Spòr. c. 4. n. 16. . 359. . 5. de Sacrif. missæ. c. 6. punct. 2. n. 20. cum et communissima) « as is seen above in lib. 1. n. 164.

The same thing he affirms regarding him who confesses at the time of Mass, namely Regin. l. 49. n. 14., provided that he had the intention of

hearing the Mass. But he denies it, section 88, chapter 6. Azor c. 7. q. 6.

Gordonus, Card. Lug. l. c. if indeed it is possible to defer confession, there is no necessity of the precept of confession. The same is said in the last article, page 4.

Where it excuses the contrary practice of some, either on account of necessity for communion, or intention to hear another Mass, or finally on account of good faith. (See below no. 314.) 5. Servers of the Mass also satisfy if they withdraw, provided that what is necessary be replaced, for instance, wine, the host, etc., because since these things are ordered to the service, they are not deemed absent, provided that they do not recede from the Church, or at least not far away.

See Bon. Thus also Lugo, disp. 22, sect. 1, n. 24, and n. 21, with Sa, 556: if it is for a brief time, or not exacted by the Church against the Dict. Leand. et 310. — « 6.

He sins who does not hear the entire Mass; and indeed venially, if a small part is omitted: mortally, if a notable part, for example, one-half or one-third. To damn him who remains from the offertory to the end, is hereby prohibited. He also added that a mortal sin may be commonly excused if one hears Mass from the beginning of the epistle, or, according to others, from the gospel until the end; or from the start until the time of communion. See Bonac. l. 1. d. 4. q. ult.

Card. Lugo, d. 22, sect. - 1, n. 3. - Question 1.

What omission in the audience with the Sacred is a grave sin? Various are the opinions. The first opinion states that it is grave to omit from the beginning up to and including the exclusive epistle; thus, see l. 3, p. 1, n. 665.

The second opinion states that it is grave to omit inclusively up to the epistle, as they hold in .9. art. 3. n. 2. Cross and point 1, note 2, with Soto, Azor, Fag. Con.

The third opinion states that it is not grievous to omit from the beginning up to and including the gospel, provided that it be heard until the last gospel. Thus Dictates... ibid. and Croix. And they consider this probable: prae n. 525. 258. et apud Azor, Bonac. . . Even though the Credo is omitted until Ut Lug.

Henry because the Creed is not a part of regularity. Hence they say that one does not gravely sin who comes before the altar, from which, according to Isidore, the mass used to begin. The second opinion seems to me more probable; but this last (rightly do they say so), who denies it to be probable in a thing which depends upon the estimation of men, when it is supported by such and so many authorities? And yet he who omits all after assumption does not sin gravely, is common with Croix n. 666.

Neither if he omit all before the epistle and all after the assumption, as . Vol. among Croix. What if he were to omit the letter as well?

Baun. and Lamas also excuse; but they contradict: that is to say, merely offering the oblation either before or after consecration is not grievous. However, according to the canon, it is certain that a lesser omission is grievous. Wherefore certainly grave is the omission of both consecration and assumption, as commonly ap. . and punct. cit. n. 3. and Croix d. n. 667. Item, si omittatur à consecratione usque ad Pater noster exclusivè. . Croix l. 3. p. 4. n. 667.

Leand. and others apud Croix. But there is doubt whether it is grievous to omit merely the communion or the consecration? They affirm according to the more common opinion, as Croix says in ibid., question 4, article 6, note 52, note 4.

But from Decretum, lib. 2, dist. 22, no. 4, cap. 6, sectio 4, n. 3. Diana p. 5. t. 43. r. 64. Escob. d. 47. num. 426. on a grave excuse, even if the entire consecration is omitted; since it is not sufficiently certain whether the essence of the sacrifice is truly in the consumption or in the consecration; and it seems probable . 358. with Burghaber, etc., very much adhere . and Mazz.

The first opinion seems more probable, because (as they say) although it is not certain whether the essence of the sacrifice consists in the consecration or in the offering, yet it is certain that both are necessary for the substance of the Eucharist to be intact. Because, on the contrary, it is not certain that the Church commands under grave excommunication for either party to be interested in both parts; therefore, the second opinion does not seem improbable. On the day however of Preparation [Friday], there is no obligation to hear Mass, if in that day a feast of the Annunciation occurs, as Mazzot says, in the third precept, order three, section four, with the common opinion, against Vasquez.

It is asked whether one who comes before the consecration would be

unable to hear any other Mass, and yet at least be bound to hear that part? Sanctus denies this; rather, it must be affirmed according to 4. c. 49. n. 6. c. 4. punct. 4. n. 13. with Lug. . But if one were to come after the consecration, then they do not hold that he is bound to hear the rest of the Mass according to ibid., based on what is said in de Sacr. miss. l. 6. n. 305, where it states: cemis, very probably the essence of the sacrifice consists solely in the consecration of the species. But it is opposed by section 4.

You gather threefold, saying that the obligation of the Mass has the nature of an office which should be recited in part if it cannot be celebrated entirely. But this does not persuade, because in the office it is commanded to pray; hence he who cannot fully satisfy in prayer is bound to that part thereof which he can perform; but where the essence of the Mass is lacking, the obligation altogether ceases, since the precept is about hearing the Mass as a whole, and not about hearing its part which is not a Mass. However, this affirmative judgment is very probable and to be held in practice (as says P. Zachar., l. 3, p. 4, n. 668), for another reason, namely, because a notable part of the sacred ceremony can be heard by the Church as commanded.

It is asked: Whether he who omits a light part of the Mass is bound to supply it if he can? Filio negat, quia, si omisit eum causa, tunc non peccavit; si sine causa, tunc jam veniale commisit. But it is more probable to contradict N. 45 with Leand., because, if he can, he is bound to hear the Mass intact. — « 7.

He does not sin, at least mortally, who successively hears two half masses from two priests, as Sa and Sot hold. Translation: "tr. 3. r. 48." Bonaventurae, dissertationis quartae, quaestio ultima, punctum quadragintaquartimum, numerus quadringentesimus tertius.

Hurt. Contrary to the proposition that one hears an entire Mass. On account of which cause it is probable, (now improbable, because condemned by Innoc.) XI. Propos. 53.) « Even though it hears simultaneously, as Bon. has stated in Lugo, etc., whose opinion seems more probable. »

Therefore, it is asked whether hearing two halves of that Mass successively from two priests satisfies the precept of the Mass? The proposition 53., condemned by Inn., must be noted for this purpose. XI. which said: He satisfies the Church's precept concerning hearing the Sacred, who hears its two parts, nay rather four parts, simultaneously from different celebrants.

But it is doubtful whether he will hear successively? The first opinion, which is held by no. 2. Sa v.

Mass hearing n. 2. at the end, l. 2. c. 32. n. 5. P. Zachar. l. 3. p. 1. n. 614. March. tr. 4. tit. 2. qu. 1. d. 2. item etc. ap. miss. c. 6. n. 7. 3 p. 1. n. 614 et probabilem putant. cc præc quæst. 9 art. 3 n. 1 cum Diana Pasqual. et præc cap. 2 num 10 § 1 affirmat satisfacere etiamsi audiat duas partes dimidias inverso ordine etiamcum aliqua interpositione temporis nimirum horæ ut sentit Mazzotta.

The reason for this judgment is, first, because the hearing then terminates well at one entire mass, either physically or at least morally; secondly, because, since Christ is the principal offerer of the mass, those two parts are already integrated by Himself; thirdly, because those two halves, although they do not suffice to constitute the unity of the sacrifice, yet suffice for the unity of the obsequium prescribed by the Church when assistance is now rendered to the parts composing the sacrifice. We say this sentence to be not sufficiently probable. If anyone, however, hears Mass from one priest up to the consecration exclusively, and from another priest from the consecration to the end, we deem it probable.

If, however, one hears from one priest inclusively up to the consecration, and from another up to the end, we consider the second opinion more probable, because it does not satisfy, as Suarez holds in sect. 2, sect. 4 of his treatise on feasts. Collection 5. Preceptum chapter 4. number 23. number 10. number 8. with Azor and Coninch. The chief reason is because the Church prescribes hearing and assisting at a mass which is one entire sacrifice; but as it is not called one sacrifice that mass which is celebrated by one priest from the beginning until consecration, and by another from consecration to the end; so too it should not be said to assist at one sacrifice, which hears two half-mass parts from different priests.

It does not hinder to say 4, as he says; for it is answered that there is truly accomplished one sacrifice then, but otherwise the matter stands in our case, where two minimal halves of sacrifices complete one sacrifice. It does not hinder to say with Croix that, since Christ is the principal offerer, a single sacrifice is truly made from those two parts; for it is answered that although Christ is one offerer in those two masses, yet because Christ offers Himself twice at that time, hence not now is one sacrifice truly constituted, but rather there are two different sacrifices, by which assisting one cannot be said to assist at one sacrifice, but at two imperfect sacrifices. Moreover, all agree and say that he who hears two mid-mass services without just cause would in no way be permitted even to remit a venial sin, as they say: 312. — « 8.

He does not satisfy who sleeps under the Sacred [rite]; (See below note 316.) he paints; teaches; or who is behind the wall, or some other thing in such a place, wherefrom nothing can be heard, seen, or noted, what is done; because he is not considered morally present. Nevertheless, a deaf one, a blind one, and whoever (although he be behind the door, or pillar, or in the window, or far from the temple) is present in such a way that it can be gathered from external signs what is being celebrated at the place, and its nature as seen by the site (even if per accidens he hears nothing, sees, or understands), is himself part of the moral presence. Thus is considered the presence of that multitude which is said to be present and is in the sight of the altar. The same thing which Bus. asserts, teach Lug.

Reg. The Die. Leand. on point 2, no. 23.

For it suffices to hear the mass being celebrated behind the altar, or through a window which leads into the temple, even though the priest is not seen; provided that he who assists may be able to advertize what is done: Thus Croix n. 641 and Mazzot. l.c., who adds, it can well be heard when the mass is celebrated behind the altar, and indeed also behind a wall or column, provided that he who assists is united with other hearers. And even from a place outside the temple, if he be joined to the multitude extended as far as the altar; as Croix n. 642 and . 334 also admit with the common consent. Mazz. autem non sufficiens esse credibilem remotionem eaque in magnae basilicae aliqua capella esset, et in altera distantissima fieret Sacrum; sed hoc videtur non probabilem, si is bene possit respicere celebrantem et quid agat: nam quisque qui adest in templo, quamvis procul ab altari, satis praestat missae moralis assistentiam ut bene ait. proc. c. 4. n. 8.

An autem possit audiri missa ab eo, qui è dome sua, interjectá vit, respicit altare? They affirm Sporer n. 9. and 244. and Lug. Die.

That likewise is not improbably admitted by Massotta l.c. and Eibel n. 355. with Escobar and many others, if the distance be small; because he already assists sufficiently morally. And to this Centinutur Tourney does not dissent in the aforementioned location, chapter 2, number 3. They say, however, Lugo and Escobar that a distance of thirty paces does not hinder.

But they do not admit it. 843. — « 9. He who listens ought to be attentive, at least virtually and in a confused manner, so that he may somehow take notice of what is being done. Hence, si quis manu attentat, nunc fabuletur, ut tamen semper advertens possit quid fiat, licet irreverentia peccet, non

tamen damnandus est mortalis.

But Genesis 3. qu. 83. with the Syllogism. Rosel. et contra Vide Cas. i. c. et Card. et 47. For all this matter see above I. 4. n. 463 and 468.

Regarding due attention to Mass, it is queried: Is it sufficient for the fulfillment of the precept of the Missae that external attention alone be given, or is internal attention also required? There are two opinions. The first opinion denies this, because the Church does not command internal acts; therefore, it suffices to assist with external moral attention, such that we can testify what occurs in Lugo de Eschar. d. 22. s. 2. n. 74. et Hear.

Syll. de Saer. miss. e. 6. penet. 4. i. n. 38. et vocant eam probablem . Mass. e. 3. §. 4. Zacche. i. 3. p. 4. n. 658. (cum communi, ut asserit) ac et.

Nevertheless, the more common and preferable opinion is that held by S. d. 45, q. 4, art. 2, quasst. 4. Eibel n. 335. Sporer n. 4.4. d. c. 6. e. 39. affirmet, requiratur attentionem internam; quia Ecclesia, licet non possit praecipere directe actus internos, potest tamen indirecte.

According to this judgment, however, it suffices (as they say at Satra, ibid., n. 4.4. cum e. n. 40.) for satisfaction, as in the office, namely, a virtual attention, that is, what one intends from the beginning to attend and does not divert that intention; for if he can be distracted advertently but does not advertently distract himself from the Mass or from the office, it still suffices: because although he voluntarily distracts himself, he is not, however, voluntarily distracted by the Mass. Thus Satra. ibid. n. 42. cum. cum pluribus. Attention sufficientis autem ad missae duplex est: 1.

Concerning the words and actions of the celebrant, the soul is devoted to God. 2. Attention to the mysteries, or to God Himself, namely, in order to contemplate His attributes, love, etc., should be given to the principal parts of the Mass, and it is directed toward consecration and communion; but after these have been performed, one ought carefully to attend. Thus, no one should anxiously lack for this attention having not fulfilled it, because it suffices to have had a general intention of adoring God. However, regarding the first judgment, which Croix calls in his book 4, note 4341, probable, and in his book 3, part 4, note 658, common, it cannot be denied that it is sufficiently probable according to what is said in 5, note 477.

And a fortiori with regard to the Mass to be heard, for which sufficient provision is made by offering moral assistance, as the cited authors with

Renzi state in 3. prae. c. 3. q. 5, there is no need for prayer to be expressly required. At least (I say), given the authority of so many and such distinguished Doctors defending this very sentiment, it seems to the Church a somewhat doubtful law (as supposed by the contrary Doctors), which also obliges those who hear to internal attention and prayer, while many serious Doctors have required more. Here Croix l. 6. p. 2. n. 4740. sets forth a contrary opinion among rigid and perilous sentiments in practice, on account of scruples, to which that [opinion] is always subject.

However, it is understood that unless the distraction is such that the hearer does not attend to the Mass in any way, as noted in volume 3, page 4, number 659.314 — Whether satisfaction is made by one who confesses sins during the time of the Mass? Decree precedent article 2, section 4, conclusion 2, with Tab and Pontas, missal chapter 6, point 4, note 46. Precedent chapter 5, notes 25 and 483. Bonaventura in n. 26 (qui contra sententiam se retractavit) Holzmann in 3 praeceptis c. 1 n. 527 (qui oppositum improbabilem vocat) item cum aliis Lugo de Eucharistia d. 22 n. 22 qui docet hanc nostram omnino tenendam.

They make use of diversifications; for Bonaventure and Bassæus deny it, because they did not pray; but this is opposed to what they teach. Medievally as we have already stated above, namely, that it suffices to hear Mass by worshipping God; for prayer is not absolutely necessary for such worship. They also deny it, because even external attention would not be given, since then being present as a defendant would have confidence, not now as one offering sacrifice with the priest.

The second opinion, however, affirms that he would be satisfied if, while confessing his sins, he attentively directed his mind to the Mass in some way. They hold this, namely point 22, paragraph 46, note 4, with Reginald and Mulf. Gob. tr. 5. n. 258. . mor. v.

Mass, cas. 2. (sed p. 4. r. 8. n. 26. et probabilem putant Croix l. 3. p. 4. n. 655. Zachar. l. 3. p. 4. n. 655. et prae n. 345. cum Pichler ac et fieret Christo; quis autem negabit confitentem Christo peccata sua missae non satisfacere? And they say the same [thing], 342. (with common assertion, as he asserts) and .

This second opinion is by no means destitute of probability, and was once itself probable; but because afterwards I observed it from many weighty doctors, I now dare not call it probable. But that one holds absolutely, and consult Croix l. a. cum; for then (as he says) at least it is presumed that the Church consents. See no. 332 for further discussion.

Not accused tiger. It is common, however, that he satisfies who examines between Masses what conscience; just as he reads a spiritual book; unless he read the history sacred with the style of learning (4), ut . Just as the celebrant can hear another's Mass, so do they think that probability, according to Croix n. 657.

Zachar. a. 657. Et quia hic, dum celebrat, jam orat. "314. — Quaeritur: 3. an satisfaciat praecepto qui, dum Sacrum amdit, extasim patitur? They deny Lugo. Lug. de Euch. d. 22. n. 19. item Torre c. 1. n. 205. quia tunc, cum sit alienatus ab usu sensuum, non assistit praesentia humana, et morali.

But they affirm that it is sufficient to do so then, because at that time attention is directed towards God, which is superior to all others, as commonly taught by the Doctors and by St. Thomas 2-2, q. 83, n. 43. Both are probable; but the former is more probable to be followed according to Article 2, Section 4, Number 2, because in ecstasy free will is not lost, as it is taught in Article 3, Section 443, Number 316: "It is asked whether one who sleeps during hearing of the Sacred Word or recitation of the office satisfies?" The response is given with the Saint.

Coram. lib. 7. c. 2. d., 32. . tr. 5. c. 6. punct. 4. n. 48. quod si post debitum intentionem audiat Sacrum vel recitet Horas ea attentione qua- saltem advertat se non omittere auditu, vel dicere ullum verbum, licet vexatus a homine non attendat ad significacionem, satisfacit et saltem non praeciat graviter. 317. — Quaeritur 5. an satisfaciat qui audit Sacrum confabulando? ibid. n. 50. cum et eis adhaerent; cum Sat. in fin. qui dicunt, eum non salisficare si confabulatio esset per magnam misse partem et de re- 3. 1. 1. (1) i: Ceterum communiter admittant quod satisfacit misse qui conscientiam exa- » misat; ut confiteatur aut aliquem librum spiritualem legit (non autem historiarum » » Hojt epistulam). » Ex c. n. 2. seria; secus si esset per parvam partem vel discontinuitim de re levi qua omnem attentionem non impediret: et sic sentit etiam Elbet vn. 343. But to this last I by no means assent; for even a light conversation can impede external attention. Now whoever, while hearing Mass, dresses himself or puts on shoes, probably satisfies, as they say, Dic. Leand. whether he commits a grave sin; but they say that he satisfies well, Dic.

Whoever, however, devotes a great part of the Sacred to collecting alms, is excused by many if he be in a small church; but otherwise, in a large one: thus Henry with others in Psalm 52, vers. dit., n. 52. But Lessius at Croix says, n. 652, that they are excused indistinctly if they attend

simultaneously to Mass: and indeed such a kind of distraction does not seem to be incompossible. Musicians, organists, and others also satisfy, if while they sing or strike instruments they attend at the same time to the mass; this too is referred to the same divine worship, as Croix d. n. 652 et 348. — • 40.

The precept of hearing mass is fulfilled wherever it is heard, whether in a parish church or cathedral, or in a regular church, or in private chapels, or outside the church. The reason is » because the Church commands only the hearing of the Mass, and not the place: therefore it is fulfilled in any place. » Thus, Article 4, number 4, with Lugo; but as regards private oratories, see note following, number 349. Table 1, section 9, chapter 7.

Axor c. 6. Horse. Net.

"Fill." Nug. 4. q. ult. c. 32. n. 4. and more. » That doctrine, although sufficiently certain, nevertheless must be examined with a particular doubt, because after all the aforementioned authors, by a certain modern man, learned in other matters, it is called into question for the diaconate, lest some erroneous scruple or conscience arise (because an obvious obstacle is removed).

». In this work it is fitting to recall many things for scrutiny concerning the privilege of private oration: and above all it is pertinent to note the words of the Brief of the Pope, by which such a kind of indult is customarily granted. Clemens XIII. To you N. N., who (as you assert) have been born from a noble lineage, concerning the private oratory existing in your usual habitation within the city and diocese of N., which has been decently walled up and adorned, or to be walled up and adorned, by all domestic uses freely, having first been visited and approved by the Ordinary of the place, with his lasting permission, one mass is to be celebrated for each day, provided that it be allowed in the same house, where such a license still holds, and has not yet been granted to another, by any priest approved by the same Ordinary, either secular or regular according to the superior's license, without prejudice to any parochial rights whatsoever, nor on Paschaltide, Resurrection, Pentecost, and the Nativity of our Lord Jesus Christ. Cap. 4.

Hub. 3. Concerning the hearing of Mass. Christi, nec non aliis solemnioribus anni festis diebus exceptis, in tua, et notorum, ac familiae tua, nec non hospitum tuorum nobilium presentia celebrari facere liberi et liciti possis et valeas, indulgemus.

We grant liberty and ability to celebrate the presence of Christ, as well as on other solemn days of the year excepted, in your own, and noted, and family, as well as the presence of your noble guests, freely and lawfully you can and are able to do, and we grant indulgence. Non obstantibus, eto.

We wish, however, that those who are relatives and whose service is not necessary according to the said act during the time of your service, while remaining there for such a mass, are not considered free from the obligation of hearing Mass in church on feast days by precept. 1. It is necessary now for each Indulus to briefly present the clause to paper for examination, so that difficulties may be encountered. 2. Clause I.

To you N. N., having access to the Neapolitans. Here is the question: whether a privileged person, by transferring his domicile to another diocese, can avail himself of that privilege there? They commonly affirm, according to Barbosa de jure ecclesiastico. 1. 2. e. 8. n. 16.

Sala from law code, decree 20, section 15, number 123. Pasqualig. on the Sacrifice of the Mass, Question 639, tract. 8, cap. 8, sect. 2, n. 152. Tambur.

Method of celebrating Mass 1. 4. c. 6. §. 4. n. 2. 4a. Cross l. 6. p. 2. n. 269. with tr. 4. r. 208. along with many others. The reason for this is that this privilege is personal, since it is not granted in place but to the person on account of his nobility: hence, as the cause of the privilege ceasing, the privilege itself ceases; so too, as the cause of the privilege persevering, namely the nobility of the person, the privilege perseveres.

They did not say that it prevented you, N. N., Diaccesis of Neapolitans; for this is not applied taxatively, but only demonstratively, namely to you who are now Diaccesis of Neapolitans, and this so that the privilege may not be usurped by another Diaccesis of some other name, which might happen. Nevertheless, the aforementioned AA. remind us that it is always required the inspection of the place and the approval by the Ordinary of the other diocese. But, notwithstanding their objections, I feel as P. Fortunato from Brixia on p. 62 and P. Gattico n. 20 in the same title c. 22, and Morilla in said place but also themselves at the oratory, where it is stated: In private house of usual habitation oratory, existing in city N.; and when added moreover the name diocese; therefore, as the privilege is limited regarding person, so too is it regarding place.

And therefore, it is thought by authors according to the first opinion cited, that they formerly commonly held that name diocese was applied solely to

the person, and not to the place; for so it is found in the exemplar from Tibi, diocese N., as in a private house of your usual habitation an oratory thus decently walled up, etc. But today, given that the name of territory, or even diocese, is still applied to the place, there can be no doubt but that it is not merely appended demonstratively but also categorically. Besides which, even if this were a doubt, such a privilege is strictly interpreted in doubt. Finally. I know n. 31., citing it for itself Pellizz. my adversary, saying that such an indult should be widely interpreted as applicable to the oratory, since it is a privilege of the prince by which no one suffers prejudice.

But the opposite appears more true to me, and P. Fort. from Brixia, l. c. c. 3, aqua mado, f. p. 94, asserts that this is common among all. Reason, because commonly it is taught by Sanchez de Matr. l. 8. d. 1. n. et 5. Bonaventura de privilegiis, dist. 1, quaest. 3, p. 7, sectio 1, n. 5, lib. 8, cap. 27, n. 28, tract. 18, cap. 1, punct. 6, n. 79, cum Palao, Tamburini et aliis passim, dicit quod licet privilegia prout sunt favorabilia late imo latissime sint interpretanda tamen privilegia illa quae juri communi derogant (sicut est hoc) regulariter stricte interpretabi debent; quia privilegium contra jus commune continet et importat dispensationem quae semper est odiosa.

This is confirmed by the regula 15 of the law in 6, where it is said: Quae a jure communi exorbitant, nequaquam ad consequentiam sunt trahenda. I said regulariter; for some cases are excepted, which we enumerate in Appendix de privileg., placed at the end of the Work; see there n. 7. Pignatellus et Pasqualigus autem dicunt posse dominum, etiamsi per breve tempus maneret ruri, uti ibi privilegium oratorii, cum privilegium hoc sit personalis.

But even this is to be denied according to Psalm 3:3. Fourthly, according to the words as above reported in the indult, where it is said: In the private house of your usual habitation prayer. But a rustic house, where the lord tarried for a brief time, cannot be called his usual place of residence.

Clause II. Who (as you assert) are born of noble stock. First place, here it must be noted with Tambur.

Method. celeb. missae l. 1. c. 6. §. 4. n. 5. quod non verificata hac conditione nobilitatis omnino corruit hoc privilegium; quia ex communi doctrina tradita a L. 7. D. 21. n. 8. cum non verificatur conditio qua non existente, privilegium non concederetur, privilegium cessat, eo quod conditio illa tunc requiritur ut causa finalis et principalis concessionis. But

Pignatell distinguishes. Cons. 68. n. 100. et sufficere ad id quamcumque nobilitatem, sive ex genere, sive ex privilegio, sive ex dignitate aut gradu vel alio modo.

But this P. Fort. from Brescia denies, saying that the Pontiff is principally moved to grant such a privilege on account of nobility, and therefore it should not be presumed that he will allow participation in it to those who are not truly noble. Furthermore he says indeed, whoever is perhaps esteemed noble in some city, will not be esteemed such in another. Clause III.

That in thy private house of the oratory in the city N., having a wall constructed and adorned for teaching purposes, may be free from all domestic uses by everyone. Note 4. words, constructed wall. They say in La Croix l. 6. part. 2. n. 266., that it is not necessary to have four walls with a door to divide the oratorium from other places, but that tapes or curtains can be adapted for the purpose of the fourth wall, which can be drawn aside or hung up for the convenience of those attending Mass.

P. Fortunatus à Brixia censet autem non sufficere amplos armarios intra civitatem parietis, qui ligneà tabulà post absolutum sacrificium claudantur. There is no doubt that such oratories should be constructed with four, or at least three walls in a separate chamber; but I know those aforementioned armories to be used in Naples, new ones, and approved by the Archbishop. And indeed, such oratories formed in this manner do not seem to conform to the tenor of the indult as P. Fortunatus from Brescia states, to be forbidden because the lateral boards suffice for the role of walls; however, nevertheless, let the wooden altar be so incorporated into the wall that it cannot be removed; according to the decree issued by the Sacred Congregation of Rites on the third day.

December 4661. In quo dictum fuit: Habens indultum eligendi oratorium in propria domo, si quis voluerit ibi ædificare altare ligneum, non indiget facultate apostolica, dummodo altare ligneum cum sacro lapide parieti colligatum amovibile non sit, et altaris portatilis imaginem non praese ferat. Note 2. word, adorned. All agree that the place for the oratory should be constructed in such a way that it is distinguished from other places designated for profane uses, so that its sacred adornment may appear: but Pasqualigus, quaest. 618, n. 3, says otherwise, namely, that greater ornamentation is required in these oratories than in churches, because although the place in churches has already been permanently dedicated to divine worship, by itself it invites veneration; but since this does not hold true for private oratories, therefore the effort of its adornment should strive to supply veneration.

Note 3. words, free from all domestic uses. They say, Pasqual. de Sacr. miss. q. 618. et Tambur. l. c. n. 9. ex Sa verb. Note 3. That is, when necessity arises, just as it is permitted even in a consecrated Church to eat, sleep, and perform similar actions, so much more are such things permitted in an oratory, which is solely designated for sacred use only temporarily.

La Croix adds in lib. 6, p. 2, n. 266, that such actions, although they may be performed without necessity, do not exceed venial fault, for the Doctors teach this among others at Bonac. and in lib. 3, cap. 5, that those [actions], even if performed in a consecrated church, are not mortal sins unless they are committed constantly and habitually, using the church or oratory as any profane place. In that however case n. 8 considers, it deems the place to have become ridiculous, and thus the privilege ceases; or rather, says An, is it illicit to place readers above the roof of the oratory or church, or to engage in other profane activities there? They deny that Roncaglia states in De Sacrificio missae, cap. 5, quaest. 3, versicle v.

Firstly, at the end with II. with the Fourth and verse. That which Sanckius in 1, 4, n. 26 and the Glossa in chapter unicus de consecratione Ecclesiae in 6 says, namely, that abstaining from these will indeed be a matter of congruity, not however of precept; for he who sleeps above the roof of the Church sleeps outside the Church. Henceforward Saint Charles Borromeo in the council 4.

Gattico c. 23. n. 6. holds that if elsewhere provision cannot be made due to the straitness of the privileged house, in this matter some indulgence should be granted. Clause IV. By the Ordinary of the place previously visiting and approving; and with the license and discretion of the said Ordinary, lasting authority.

The oratorium ought indeed to be visited and approved by the Ordinary, so that it may be fitting in a decent place; but this is to be done once gratuitously. Post vero approbationem oratorium, neque Ordinarius impedire potest ut in eo celebretur; hoc referre decet Decr. de Nominis Ordinarii venientis tam Vicarium Generalis Episcopi quam Capituli sede vacante ex lib. 3. disp. 29. n. 3 et 5. Episcopus autem potest etiam alteri hanc visitandi facultatem committere, cum haec facultas officio Episcopali perpetuo sit annexa. . d. 31. n. 4. et alii passim.

Those words, and concerning the perpetual license of the Ordinarius, assert his arbitrium, not to be appended in all indults, but where they are

appended; if the Ordinarius should revoke that license, it is not indeed possible for him to celebrate in the oratory, but only he will be able to be constrained, so as to concede, if he refuse unjustly; and 15. The same author, however, in n. 16 and Sanchez, Consilium, lib. 7, c. 4, dub. 55, num. 7, notes that the word arbitrium differs from free will; hence he says that the Ordinary cannot revoke such a license without just cause. Nevertheless, if a just cause exists, it can well suspend the celebration; and not only by virtue of the aforementioned clause, but also by virtue of the Tridentine authority from the cited Decree in session 22, concerning Clause V.

One mass for each person per day, provided that in the same house the license to celebrate is still valid and has not been granted to another. Note, one mass, that is to say, unique, as he declared (whatever others may have said), Blessed [meaning Blessed John XXIII]. XIV. in bulla Magno; see what is to be said concerning this point in book 6, n. 359. v.

Note III. By the words however, provided that they be in the same house, etc., even if one of the two masters had his own oratorium separated (vulgarly called apartment) within the same house, neither master would thereby obtain a privilege. Clause VI.

By whatever secular priest, approved by the same Ordinary either as a layperson or with the license of his superiors, regular. Chapter 1. Dub. 3. Concerning hearing Mass.

Some author thought, through this clause, that priests required special approval to celebrate in a private oratory, but rightly this is denied. Clause VII. Without, however, any prejudice to any parochial jurisdiction.

This clause implies that those celebrating [it] are prevented from announcing marriages, fasts, and similar matters pertaining to parish priests in private chapels. It imports also, that they cannot minister (whatever they may say. XIV. In qu某输入似乎被错误地中断了。请提供需要翻译的具体拉丁文句子，确保它完整无缺以便为您准确翻译。

Here you inquire. The sacrament of penance is universally prescribed in the Roman Ritual to be ministered nowhere at home except for a reasonable cause. Clause VIII.

Paschatis Resurrectionis, Pentecostes, et Nativitatis Domini Iesu Christi, nec non aliis solemnioribus festis diebus exceptis. He notes from title 40, §: It should be known by name Pasch and Pentecost, only the first day is

understood to contain the true solemnity. Which days are therefore understood under the more solemn ones, see book 6, no. 359, v.

From which it is sweated forth in the fourth place where the decree of the Sacred Council explaining them is brought forward. Clause IX. To celebrate in your presence and that of your children and family, as well as the noble presence of your guests.

The name of the Lord altogether requires the presence of the Lord. Once Roncaglia de Saor. mass o. 5. q. 3. verse. Fifthly, since Barbosa considered it a probable opinion that mass could be celebrated with the family present, even though the Lord was absent, saying that a particular part (in your presence, and that of the children and family) can be understood as either inclusive or exclusive; otherwise (he says), the absence of the Lord would not suffice if the family were absent.

But today we have from the blessed ones according to Bened. XIV. In decreto incipiente: Cum duo nobiles (vide constitutiones Benedicti XIV. in extensum relatas in fine hujus operis, de Romanorum Pontificum Decretis part. 1. c. 2. decret. 5.) non posse celebrari in privato oratorio, nisi actu intersit aliqua persona ex iis, quibus indultum principaliter concessum et directum est. In the name of the children, they say, Pignatell. Tom. 6.

Cons. 58. n. 405. et Pasq. de n. 4. venire etiam filios illegitimos, modo sint nati ex certo patre, et de ipso constet. P. Gattico de orat. dom. c. 25. n. 25. et P. Fortun. à Brixia cod. tit. cum; atque hujus sententiae ego magis adhæro, cum hujusmodi privilegium stricte sit interpretandum, prout probavimus in explicando clausulam I. By name of family come both consanguineous and affines.

Whether, however, all the relatives of whatever degree come? They affirm Pignatell. Cons. 94. n. 102. et Verumtamen P. Gattico loc. cit. n. 76. sentit, privilegium non extendi, nisi ad quartum gradum; quia (ut ait) praesens disciplina, postquam impedimentum matrimonii ex carnali cognatione restrinxit ad quartum gradum, non respicit amplius ad gradus inferiores.

Moreover, Tamburinus with Pellizzario says that it is pleasing to take advantage of the privilege for one's near relatives, even if they live at their own expense and in separate parts, provided they dwell in the same house. But more commonly and truly this is denied by Roncag. in the Sacrifice of Mass, cap. 5, q. 3, v. Sixth.

Croix lib. 3. p. 4. num. 627. et P. Fort. a Brixia, quia ex indulto requiritur

ut cognati non solum degant in eadem domo, sed etiam ut sint de ejus familia. Finally, concerning the name of guests, P. Fort. a Brixia with Pelliz. and Gattico say that a guest (provided he is noble according to the indult) may be admitted for one day; moreover, even one invited for lunch by the privileged person, so as to partake of the privilege. The servants of the household cannot nevertheless rejoice in that privilege, since they are not of the privileged family.

Clause XI. We wish, however, that those who are household members and interested in such an act of service mentioned at your time of employment, but are not among the privileged family, be considered as not being free from the obligation of hearing Mass in church on feast days by precept. That is why, if family members are to enjoy the privilege of oratory, it is required that they live at the expense of the lord and be occupied with his service, according to chapter Sicut nobis, from the signification of the word in number six.

It is required that themselves be necessary to the service of the Lord in the act itself. It is required 3. that they actually be necessary for the service of the lord at the time when mass is celebrated; thus rightly did P. Fort. from Brescia with Gattico; this is evident from the words of the decree. Pignatellus consilium 98 n. 407 censet autem quod familiares utiles sint servitio habendi pro necessariis; idque admittit P. Gattico caput 25 n. 49 saltem casu quo famuli sint necessarii convenienti decori domini.

But neither does P. Fort. à Brixia deny from the beginning what has been repeatedly stated above, namely that this privilege must be strictly interpreted and according to the rigorous meaning of the words; he admits only with Gattico one servant who is morally considered necessary, so as to assist the master in those matters which may occur to him at the time of the Mass. Cognatī autem familiares hoc privilegium non gaudent, nisi assumantur a ipso privilegiato ut assistant et sint necessarii modo prædicto cognatis qui sunt sub cura privilegiati. 319. — Dubitatur 4. Do they rejoice the servants, living indeed at the expense of the master, but residing outside his house?

Bonacina, Barbosa, Lezana, et Gobat deny this, according to Croix, lib. 6, par. 2, num. 272. But affirming is P. Mazzotta, c. 2. sect. 2. q. 22. P. Gattico ap.

P. Dubitatur 2. Whether all strangers, hearing mass in a private chapel, satisfy the precept? They affirm, with Bus. and Azor and others.

But they decidedly reject this opinion. Celebr. miss. lib. 4. c. 4. §. 4. n. 34. Sporer from the third precedent chapter, number 4, note 14. Mazzotta concerning the Sacrifice of Mass, chapter 3, and others, from the words granted, where it is said: We wish, however, that those who are not of the family not be considered free from the obligation of hearing mass in the Church.

It does not hinder to say that outsiders may now hear the Mass elsewhere, and that there is no obligation at a particular place; for those words, "We wish," etc., are added by the style of the Curia pro tempore, when formerly the hearing of Mass was obligatory in the parish. But Tamburinus answers rightly, that by saying "volumus, etc.", the Pontiff sufficiently imposes the precept even regarding place, by commanding that those who are not of the family be bound to hear mass in public Church, not now in parish, but in a public chapel, excluding the private oratory. Doubt is cast.

At some time is it incumbent upon the lord to use the privilege of the oratory, if he cannot go to the church? It seems that this should be denied, because if it were held to use its privilege, the privilege would become burdensome. They meritably affirm that the lord is bound to do this, if he can conveniently have a priest, Pasqua- lig., q. 662, num. 4.

Gattico, caput 25., numerus 33., et P. Fortunatus a Brixia cum Nugentio, Paschalis et Gattico tenetur privilegiatus, si commode possit, providere de sacerdote non solum sibi, sed etiam aliis de familia, si quis eorum nequeat ad ecclesiam accedere. It is probable that whoever hears mass either in a field or in camps satisfies [this requirement], Croix n. 629. with Bon. and DD. cited. Here it is to be noted, that oratories erected and blessed by the Bishop in the houses of bishops, religious, or missionaries privileged, or elsewhere, with a door on the street (understand this as referring to the houses of laymen), are no longer private oratories, but true churches; wherefore those who hear mass therein satisfactorily satisfy, and in whatever feasts?

See Croix n. 626. And see the translation of the Eucharist, book 6, from note 357. DOUBT IV.

What is the obligation to hear mass in the parish on Sundays and greater feasts? 320. — « Resp. » Although this indeed is commendable, it nevertheless is not an obligation. It is common among authors (whom see above in the last case of doubt) and as it says in section 4, note 2, certain; although Marchantius in the Mystical Candlestick volume 4, chapter 7, and in the moral resolutions, in the printed manual form, canon 8, calls into

doubt the doubt and endeavors to move a scruple.

Reason is 4. Because there is no such precept concerning that matter. 2. Because c. As the Lord commands, the parish priest is to be ordered to eject those who wish to hear this mass with contempt for their own parish priest: therefore without (such) contempt (formal). 3.

Because c. If anyone is enjoined upon consecration, dist. 4, those who have an oratory at home to hear sacred liturgy in the major feasts either in the parish or in cities. 4. Because the universal custom of the faithful, and even of the parish priests and confessors themselves (who do not question penitents regarding this matter) insinuates this not merely as Marchant says, l.c., but manifestly teaches it. 5. Because it merely says that the people should be admonished (not, however, constrained) to frequently visit the parishes, at least on Sundays and the greater feast days.

See ... 3. c. 4. dub. 6. 321. — "Nor do the objections which Marchant raises in his work obstruct this." Because laws against what would decree contrary; thereby Sixtus IV. On truce and peace, let it be commanded that mendicants not preach, nor be allowed to hear mass in the parish on Sundays and feast days.

For primarily from that decree of Sixtus nothing follows, since he does not command to be observed, but merely prohibits the public preaching, not the observance itself. For it is most honorable to allow the people to hear Mass in the parish; and therefore it should be advised, especially publicly, to dissuade from this; for from hence scandals can arise, and the contempt of one's own parishioners can follow; and this is what Sixtus sought to avoid. Then, perhaps certain ancient laws have this right; in later times it has been derogated through various privileges and a universal custom received.

Cajet. Lugo, and the rest of the AA. cited. It does not hinder that many canonists followed this opinion.

For it was once understood thus by some; yet at this time, after so many and such ample privileges, after such clear and long-standing custom, after the Eminence. Cardinal declarations, and even those of the Popes themselves, noted decrees contrary to it (as see seq. resp.), whether anyone teaches this, I do not know. 322. — Nec locus citatus, quem objicit, Cap. 4. Dub. 4 De missa audienda.

» as is evident from the very words themselves, and from the declaration

of the Most Eminent. Cardinal, with augmented explanation and interpretation thereof. - "Resp. 2." The bishop cannot coerce with censures, nightingales, other beasts » to hear mass in the parish.

It is contrary to March in the aforementioned place, where he says, Regulars so commonly respond that they magnificently display the borders of their privileges and dilate phylacteries: and against the author of Parochiani obedientis. The reason is, as Navarrus says, the Bishop cannot take away (nor can he restrict) the common and general custom of the whole world. They teach accordingly besides the aforementioned author cited above.

Saint Thomas, title 9, chapter 40, section 4, note 4. Syll. v. Missa, Tolet. . 4. t. 7. cap. 3. etc., et communis omnes theologi, et canonici moderni: afferuntque Azor t. 4. l. 7. c. 8. q. 6. et lib. 4. pro hac sententia declarationem Card.

» In: Non posse ordinarii nuditatis et pecuniae cogere ad audiendam missam vel conventionem in propria parochia, etiam in casu negligentiae. And si quis his duobus, tamquam Regularibus, minus fidet, legit potest eandem declarationem ap. 8. On the Sacrifice of the Mass and Sitting, 24. On the Reform of Chapters, c. 4, n. 42.

Item translationem de Officio et potestatem parochi, ubi eamdem sententiam Barbos ipse sequitur et pro ea supra viginti auctoree celebres, partim theologos, partim canonistas, quas regulares, quas non regulares, citat. See his Remissions at Trent. Printed. Against the year 4644 and Jerome in practical episcopal matters page 2. v.

Pardon, » church, and p. 4. v. Mass, §. 6. The same is confirmed by the eloquent words of Clement VIII in the year 4592, day 22.

In his December decree regarding this very controversy raised at Dijon, he extinguishes it with these words: We hereby confirm our decree that seculars and all Christians are permitted to hear masses on Sundays and other greater feast days in churches, both those of the Friars Preachers and those of other mendicants, as well as those of the Society of Jesus according to their privileges and ancient customs, provided they do not show contempt for parochial churches; and this applies equally to said friars Preachers and priests of that society as well as to others to whom this has been granted by the Apostolic See, provided they are suitable and approved by the Ordinary. They may also confess their sins, even during Lenten, Paschal, and any other time, etc. If however one wishes to more

clearly understand these privileges and similar ones, let them consult (omitting other matters) the compendium of the Society of Jesus's privileges where Paul III's clear words are found in the Extraordinary Decree issued in the year 4549. Calendar. Novemb. quæ incipit: Licet debitum; quà omnibus Christi fidelibus cujuscumque conditionis qui verbi Dei praedicationibus in templi ejusdem Societatis interfuerint concedit ut ibidem missas audire et sacramenta recipere liberè et vacum Quarti et vers.

That which is stated in 4th note number 26 and in the Gloss on chapter one of consecration of the Church in the sixth decalogue, namely, that abstaining from these things will indeed be a matter of congruity, not however of precept; for he who sleeps above the roof of the Church sleeps outside the Church. Furthermore, Saint Charles Borromeo in the Council 4. Gattico c. 23. n. 6. holds that if elsewhere provision cannot be made due to the straitness of the privileged house, in this matter something should be indulged.

Clause IV. By the Ordinary of the place previously visiting and approving; and with the license and discretion of the said Ordinary, lasting authority. The oratorium ought indeed to be visited and approved by the Ordinary, so that it may be fitting in a decent place; but this is to be done once gratuitously.

Post vero approbationem oratorium, neque Ordinarius impedire potest ut in eo celebretur propositum definitum referre Decretalium de nomine Ordinarii venientis tam vicarii generalis Episcopi quam capituli sede vacante ex libro tertio quaestio ventesimaquarta n. 3 et 5. Episcopus autem potest etiam alteri hanc visitandi facultatem committere, cum haec facultas officio Episcopali perpetuo sit annexa. . d. 34. n. 4. et alii passim. Those words, and concerning the perpetual license of the Ordinary, assert the authority thereof not to be appended in all indults, but where it is appended, if the Ordinary withdraws the license, it cannot indeed be celebrated in the oratory; only he will be able to be compelled, that he concede, if he unjustly denies; and 15.

The same author, however, in n. 16 and Sanchez, Consilium, lib. 7, c. 1, dub. 55, num. 7, observes that the word arbitrio differs from free will; hence he says that the Ordinary cannot revoke such a license without just cause. Nevertheless, if a just cause exists, it can well suspend the celebration; and not only by virtue of the aforementioned clause, but also by virtue of the Tridentine authority from the cited Decree in session 22, concerning Clause V. One mass for each person per day, provided that the license to celebrate in the same house continues to be valid and has not

yet been granted to another.

Note, one mass, that is to say, unique, as he declared (whatever others may have said), Blessed [meaning blessed]. XIV. in bulla Magno; see what is to be said concerning this point in book 6, n. 359. v. Note III.

By the words however for a while in the same house, etc., even if one of the two lords had his own oratorium separated (vulgarly called apartment) within the same house, neither would the other lord obtain a privilege. Clause VI. By whatever secular priest, approved by the same Ordinary either from his own authority or with permission from his superiors, regular. Chapter 4.

Dub. 3. Concerning hearing Mass. Some author thought, through this clause, that priests required special approval to celebrate in a private oratory, but rightly this is denied.

Clause VII. Without, however, any prejudice to any parochial jurisdiction. This clause implies that those celebrating [it] are prevented from announcing marriages, fasts, and similar matters pertaining to parish priests in private chapels.

It imports also, that they cannot minister (whatever they may say. XIV. In quadam Encyclica ad Episcopos Poloniae; vide dicenda I. 6. num. 359. in fine, vers. Here you inquire.

The sacrament of penance is universally prescribed in the Roman Ritual to be ministered nowhere at home except for a reasonable cause. Clause VIII. Paschatis Resurrectionis, Pentecostes, et Nativitatis Domini Iesu Christi, nec non aliis solemnioribus festis diebus exceptis.

He notes in title 40, § 4: It should be known that by the names Pasch and Pentecost only the first day is understood, on which the solemnity truly takes place. What days are therefore understood by these more solemn ones, see book 6, no. 359, v. Whereby it is deduced, there is presented the decree of the Sacred Congregation explaining those matters in chapter 4.

Clause IX. To celebrate in your presence and that of your children and family, as well as the noble presence of your guests. The name of the Lord altogether requires the presence of the Lord.

Of old Roncaglia concerning the third question, verse. Fifthly, since Barbosa considered it a probable opinion that mass could be celebrated

with family present, even though the lords were absent, saying that a particular part (in your presence and that of the children and family) can be understood as either this or that; otherwise (he says), the lord's absence would not suffice if the family were absent. But today we have the holy one from Bened.

XIV. In decreto incipiente: Cum duo nobiles (vide constitutiones Benedicti XIV. in extensum relatas in fine hujus operis, de Romanorum Pontificum Decretis part. 1. c. 2. decret. 5.) non posse celebrari in privato oratorio, nisi actu intersit aliqua persona ex iis, quibus indultum principaliter concessum et directum est. In the name of the children, they say Pignatell. Tom. 6. Cons. 58. n. 405. et Pasq. de n. 4. veniret etiam filii illegitimi, modo sint nati ex certo patre, et de ipso constet.

P. Gatico de orat. des. c. 25. n. 25. et P. Fortun. à Bricin eod. tit. cum; atque hujus sententiae ego magis adhereo, cum hujusmodi privilegium strictè sit interpretandum, prout probavimus in explicando clausulam I. By the name of the family come both consanguineous and affinal relations. Whether, however, all the kindred of whatever degree come?

They affirm Pignatell. Cons. 94. n. 102. et Verumtamen P. Gattico loc. cit. n. 76. sentit, privilegium non extendi, nisi ad quartum gradum; quia (ut ait) praesentis disciplinae postquam impedimentium matrimonii ex carnali cognatione restricta est ad quartum gradum, non respicit amplius ad gradus inferiores. Moreover, says Tamburinus with Pellizzario, to rejoice over the near relations, even if they live at their own expenses and in separate parts, provided they dwell in the same house.

But more commonly and truly this is denied by Roncag. in the Sacrifice of the Mass, cap. 5, q. 3, v. Sixth. Croix lib. 3. p. 4. num. 627. et P. Fort. à Brixia, quia ex indulto requiritur ut cognati non solum degant in eadem domo, sed etiam ut sint de ejus familia.

Finally, concerning the name of guests, P. Fort. à Brixia with Pelliz. and Gattico say that a guest (provided he is noble according to the indult) may be admitted for one day; moreover, even one invited for lunch by the privileged person, so as to partake of the privilege. The servants of the household cannot nevertheless rejoice in that privilege, since they are not of the privileged family. Clause XI.

We wish, however, that those who are related to the family and are interested in this said act of service during the time spoken of, but are not necessary there, should be considered as scarcely free from obligation to

hear Mass in the Church on feast days according to the precept. That familiars may enjoy the privilege of oratory, it is required that they live at the expense of the lord and be occupied with his service, according to chapter Sicut nobis, from the significant word in 6. It is required that they themselves be necessary to the service of the Lord in the act itself.

It is required 3. that they actually be necessary for the service of the lord at the time when mass is celebrated; thus rightly did P. Fort. from Brescia with Gattico; this is evident from the words of the decree. Pignatellus consilium 98 n. 407 censet autem quod familiares utiles sint servitio habendi pro necessariis; idque admittit P. Gattico caput 25 n. 49 saltem casu quo famuli sint necessarii convenienti decori domini. But neither does P. Fort. à Brixia deny this from the beginning, having repeatedly stated it above; because this privilege is strictly speaking, and according to the rigorous propriety of words, it must be interpreted; he admits only one servant, who is morally reputed necessary, so that he may assist the master in those matters which may occur to him at the time when the mass is celebrated.

Cognates, autem, non gaudent hoc privilegio, nisi assumantur ab ipso privilegiato ut assistant et sint necessarii modo prædicto cognatis qui sunt sub cura privilegiati. 349. — Dubitatur 4. Do they rejoice the servants, living indeed at the expense of the master, but residing outside his house? Bonacina, Barbosa, Lezana, et Gobat deny this, according to Croix, lib. 6, par. 2, num. 272.

But affirming is P. Mazzotta, c. 2. sect. 2. q. 22. P. Gattico ap. P. Dubitatur 2.

Whether all strangers, hearing mass in a private chapel, satisfy the precept? They affirm, with Bus. and Azor and others. But they reject this very opinion. Celebr. miss. lib. 4. c. 4. §. 4. n. 34.

Sporer from Third Particular Question, Chapter 4, Number 14. Mazzotta concerning the Sacrifice of Mass, chapter 3, and others, from the words granted, where it is said: We wish, however, that those who are not of the family not be considered free from the obligation of hearing mass in the Church. It does not hinder to say that strangers may now hear the Mass elsewhere, and that there is no obligation at a specific place; for those words, "We wish," etc., are added by the curia in style for the time being, when formerly the Mass was to be heard in the parish.

But properly responds Tamburinus, that by saying "we wish," etc., the

Pontiff sufficiently imposes the precept even in place, commanding that those who are not of the family be held to hear mass, not now in the parish, but in public church, excluding private oratory. Doubt is cast. At some time is it incumbent upon the lord to use the privilege of the oratory, if he cannot go to the church?

It seems that this should be denied, because if it were held to use its privilege, the privilege would become burdensome. They affirm that by right the lord ought to be held bound to use the privilege of oratory, if he can conveniently have a priest, Pasqua- lig. q. 662. num. 4. Gattico cap. 25. num. 33. et P. Fort. à Brixia cum Nugnez, Pasqual. et Gattico) tenetur privilegiatus, si commodè possit, providère de sacerdote, non solùm sibi, sed etiam aliis de familia, si quis eorum nequeat ad Ecclesiam accedere.

It is probable that whoever hears mass either in a field or in camps satisfies [this requirement], Croix n. 629. with Bon. and DD. cited. Here it is to be noted that oratories erected and blessed by the Bishop in the houses of bishops, religious, or privileged missionaries, as well as elsewhere, with a door on the street (understand this to mean the houses of laymen), are no longer private oratories but true churches; hence those who hear mass therein satisfactorily do so, and in whatever feasts? See Croix n. 626.

And see the translation of the Canon Law regarding the Eucharist, book 6, from note 357. DOUBT IV. What is the obligation to hear mass in the parish on Sundays and greater feasts? 320. — « Resp. »

Although this indeed is commendable, it nevertheless is not an obligation. It is common, as stated by the authors (as seen in the aforementioned doubt case), and certain; although Marchantius in the Mystical Candlestick, volume 4, chapter 7, and in the moral resolutions, in the printed manual form, canon 8, calls it into doubt and seeks to move a scruple. The reason is 1.

Because there is no precept concerning that matter. 2. Because it is commanded that the parish priest, before Mass, eject those who wish to hear this Mass with contempt for their own parish priest: therefore without (formal) contempt it is permissible. 3. Because c. If anyone is commanded, from the matter of consecration, dist. 1., to hear sacred liturgy in a parish on major feast days either in the parish or in cities who have an oratory at home. 4.

Because the universal custom of the faithful, and even of the parish priests

and confessors themselves (who do not question penitents regarding this matter) does not merely insinuate, as Marchant says in loco citato, but plainly teaches. 5. Because it merely says that the people ought to be admonished (not, however, constrained) to frequently attend parishes, at least on Sundays and the greater feast days. See ... 3. c. 1. dub. 6. 324. — "Nor do the objections which Marchant raises in objection 1 stand in the way."

Because laws against what decree contrary; for this reason Sixtus IV. On truce and peace, let it be commanded that mendicants not preach, nor be allowed to hear mass in the parish on Sundays and feast days. For primarily from that decree of Sixtus does nothing follow, since he does not command to be held, but merely prohibits the public preaching, not being held.

For it is most fitting that the people hear Mass in the parish church, and that this be advised; on the contrary, it should be dissuaded, especially publicly; for from this can arise scandals, and the contempt of one's own parishioners; and this is what Sixtus sought to avoid. Then, perhaps some ancient laws have this right; in later times it has been derogated through various privileges and a universal custom received. Cajet.

Lugo. and the rest A. A. cited. It does not hinder that many canonists followed this opinion.

For this is how some understood it formerly; yet at this time, after so many and such ample privileges, after such clear and long-standing custom, after the Eminence. Cardinal declarations, and even those of the Popes themselves, noted decrees contrary to it (as see seq. resp.), whether anyone teaches this, I do not know. 322. — Nec locus citatus, quem objicit, Cap. 4. Dub. 4 De missa audienda.

» as is evident from the very words themselves, and from the declaration of the Most Eminent. Cardinal, with augmented explanation and interpretation thereof. Resp. 2. A bishop cannot coerce with censures, fines, and other penalties to attend mass in his parish.

It is contrary to March's location cited above, where he says that Regulars respond commonly in such a manner as to magnificently display the borders of their privileges and to dilate phylacteries: and it is also contrary to the author of Parochiani obedientis. The reason is, as Navarrus says, the Bishop cannot take away (nor can he restrict) the common and general custom of the whole world. They teach accordingly besides the

aforementioned author cited above.

Saint Thomas, title 9, chapter 40, section 4, note 4. Syll. v. Missa, Tolet. . 4. t. 7. cap. 3. etc., et communis omnes theologi, et canonici moderni: afferuntque Azor t. 4. l. 7. c. 8. q. 6. et lib. 4. pro hac sententia declarationem Card.

» In: Non posse ordinarii mulctis et pacificis cogere ad audiendam missam vel conventionem in propria parochia, etiam in casu negligentiae. And si quis his duobus, tamquam Regularibus, minus fidet, legit potest eandem declarationem ap. » . 8. on Sacrifice of Mass and Sitting. 24. on Reforming Chapter 4. n. 42.

Item translationis de Officio et potestatis parochialis, ubi eamdem sententiam Barbos ipse sequitur, et pro ea supra viginti auctores, partim theologos, partim canonistas, quas regulares, quas non regulares, citat. See his Remissions in Trent. Printed. Against Verpia anno 4644. and Hieronymus in practice episcopalibus page 2. verse.

Pardon, » church, and p. 4. v. Mass, §. 6. The same is confirmed by the eloquent words of Clement VIII in the year 4592, day 22.

December's decree, concerning this very controversy raised in Dijon, by which it is resolved with these words: We hereby confirm our decree that seculars and all Christians are permitted to hear masses on Sundays and other greater feast days in churches, both those of the Friars Preachers as well as those of other Mendicants, and also of the College of the Society of Jesus according to their privileges and ancient customs, provided they do not show contempt for parochial churches; and this applies equally to said friars preachers and priests of that society as well as to others to whom this has been granted by the Apostolic See, yet still they may be approved by the Ordinary, and it is permissible for them to confess their sins, even during Lenten, paschal, and any other time. But if one wishes to more clearly know these privileges and similar ones, let him look into (omitting other matters) the compendium of the privileges of the Society of Jesus, where there are also clear words of Paul III in the Extraordinary Decree issued in the year 4549 besides those of Leo X. Calendar. Novemb. quæ incipit: Licet debitum; quà omnibus Christi fidelibus cujuscumque conditionis qui verbi Dei praedicationibus in templi ejusdem Societatis interfuerint concedit ut ibidem missas audire et sacramenta recipere liberè valeant neque ad id parochiales Ecclesias accedere teneantur.

But, let no one marvel at such extensive privileges granted to Regulars by

various Pontiffs; it will please him to inspect their bulls, in which he will find most serious motives: or if he does not wish to inspect them, he will at least collect from Innocent III (while he saw the Lateran Church almost collapsing) that He showed how it was sustained by Saints Dominic and Francis. Let him consider that, just as formerly the doctrine of Christ was translated into various parts of the world and even into Germany through the efforts of Regulars, so it would not have been preserved for a long time without their support, or at least would not have flourished less. And finally, that no one may reproach Regulars for defending their privileges, it must be known that without the consent of the Apostolic See they cannot renounce or yield them, as is seen in book 2 of On Arbiter, chapter 5; but even if they do so, it will be displeasing and a sin, because an injury will thereby be inflicted on the Order and the Church as a whole.

Now to the arguments of Marchantius I briefly respond. "4." He brings forward the authority of certain P. Capuccini, who wrote about a Parochian obedient; and I believe that to this he has opposed rather many and weighty authorities somewhat earlier. He says that the practice of some bishops is contrary to this, and that it is founded on ancient and new law; he sits there, saying that each one should be held interested in his own parish, to hear the word of God and the rudiments of faith: these things are taught in many rural places during the mass; therefore they can also be compelled to attend mass. 323. — « Resp. 4.

His practice is such (namely) as that of few and contrary to the common practice of bishops in all kingdoms, provinces, and furthermore of the Supreme Primate. « 2. » The practice in question cannot be grounded in ancient law, since (if anything) it has been derogated from by privileges and abolished by custom; nor in new law, firstly because speaking of sermons and catechesis, it made no mention of the mass, and the presumption does not hold in penal matters; secondly because although it might conveniently be done if regularly and easily possible; thirdly because even that obligation with regard to sermons is not shown by the universal custom of the Church, since perhaps it could not conveniently and properly be done regularly. Lugo l.c.: Neque catechesim communiter fideles docentur in missa, nisi forte in pagis, ubi rarius contendunt Regulares cum parochis de re praesenti.

Finally, I do not know whether those bishops whom he speaks of are perhaps among those whom Pius V., in his bull Etsi Mendicantium, complains about, namely, that although bishops ought justly to foster and assist mendicant orders, they not only neglect this; but also, by corrupting the words of the Council of Trent, bring about inconveniences and disturbances. Chapter 4. Dub. 4.

On hearing Mass. - 3. Citing the decrees of the Leodic and Namur councils, he adds: Who then dare despise these, and the fathers of this council, among whom many theologians were? Resp. These decrees (and if there are any similar ones) must be understood in such a way that parish priests do not hear the Sacred Liturgy outside their own parish with contempt for them: or, if they have some other sense, they must not be received nor customarily used.

Thus AA. cited commonly. It can be seen C. Lugo loc. cit., and Zeroll. ll. cc., and a most worthy book of the libellus of Francisci Pontani, preacher royal, whose title is: Responses to inquiries of some certain prelate's marriage, etc., excused first in French at Nancei anno 1625, afterwards however given in Latin, and rejected in Vienna Austria, printed by Michael Riciti, anno 1634. I militate in favor of other reasons by which he seeks to persuade (without obligation) the frequency of the parishioners: namely, that I do not intend primarily to condemn as utterly unfitting what is honest and decent, but merely to impede erroneous conscience, lest, with persuasion of parochial obligation or apprehension of sin, the temples of the Regulars be frequented.

Bened. XIV. De Synodo libri 44., caput 44., nomen 7. ostendit (contra Iuvenalem et Van Espen) nunc non esse obligationem audiendi missam in parochia (4). (1) Foritan omnes juvabit, hic ipse verba Bened. XIV. loc. cit., legere: "Caput inscribens: 'Non potest nimia severitate excusari synodalis constitutio,' adigens seculares ad audicendum verbum Dei in ecclesia parochiali missam."

> on other days of the Lord and on festive days. » n. 7. ita pergit: Quod vero alias spectat laudatas Constitutiones Midenses, vetus pariter controversia est, sub finem praesertim XV saeculi in Germania inter parochos et fratres Mendicantes summa contentione agitata, num fideles teneantur diebus festis parochiali missae interesse. The cause was referred to Sixtus IV, who, after considering the arguments on both sides, finally, on June 17, 1478, promulgated that constitution which begins "Vices illius," reported in Extravag. 1 de treuga et pace, where it orders: That Mendicant brothers not preach, and parishioners not be required to hear mass in their parishes on feast days and Sundays; since it is prudently guarded by law that parishioners attend the parish church for the celebration of Mass on those days, unless perhaps they absent themselves from the church for some honorable reason: from which Decretal it clearly follows that it is commonly guarded by law that each faithful person be present at the parish church for the celebration of Mass on feast days.

The said obligation was imposed before the Council of Sardis, in which Osius, Bishop, can. 14, tom. 1. Herduini collectionis col. 648. Hemini dicit: Fratres nostri constituerunt in superiori concilio, ut si quis laicus in ea, in qua commoratur, civilete tres Dominicos dies, id est per tres septimanas, non celebrasse conventum, privetur communione: nomine quippe convenlus designari missam solemnem, in qua populus cum suo pastore unum efficit cinctum, unamque representat Ecclesiam, communiter adnotarunt Canonistae. The Fifth Lateran Council renewed the canon of Sardis, canon 80, book 3, collection Harduini, col. 1890, decreeing that if any cleric in a civil office does not celebrate three Sunday feasts, that is to say within three weeks, and it is indeed the case that he fails, he shall be deposed; but if he is a layman, he shall be excommunicated.

That this precept might be fulfilled, it was established in the Synod of Nantes, canon 1, reported in the Decretales of Gregory IX, cap. 2, de parochiis, that on days of Christmas and feast days, before celebrating Mass, presbyters should question the people to see if there is another parishioner in the church who desires to hear Mass for his own spiritual comfort. V. DUBIUM What excuse them from hearing the Sacred? What are the causes that hinder them?

Is he who has the privilege of speaking bound to bring a priest? How are those excused who are traveling, or imprisoned, or sick, or excommunicated? Are those who guard houses excused, etc., lest they be imprisoned or assailed by the sick? Do wives, children, and servants fear the offense of their lords? Is there ever any traveler excused? What distance from the Church renders one liable to exclusion from hearing Mass? Are those excused on account of famines, struggles, births, or because they lack suitable clothing? And whether a pregnant girl, or one at the time when proclamations should be made for herself, can omit the Sacred? Whether the girl knowing that she has been turpitiously desired by someone can dispense with it? Whether the loss of a great opportunity is excused? Is there another greater spiritual good?

Are pilgrims, who desire for a brief time to be at a place, bound to hear mass there, where this is part of the precept? 324. — « R ESP. There are two causes, one of which is that if it exists, it should not be privately celebrated in the porch with a privilege; and if they find it, let them immediately expel it from the Church and compel it to return to its own parish: vol. 6. part. 1. Collectionis Harduinii col. 457.

And in the same council's canon 2 it is added: No presbyter shall celebrate

mass for another parish's people unless he has been there on the journey or has had a meeting there. The same law and obligation were imposed upon many by subsequent Synods, which Natalis Alexander brings forward in his first volume, second book, concerning the sacraments. Eucharistio art. 8. regul. 10.

But now these sanctions have been derogated from not only contrary to the custom, which Saint Antoninus in his Summa, title 9, chapter 10, teaches as having been established by its own age in many places without sinning, who hears mass outside the parish on a feast day where such custom prevails that it should be heard in any church, but also from subsequent Constitutions of Supreme Pontiffs: for indeed Leo X. Constitutione editâ die XIII. November 15th, 1517, thus discursively states: By Apostolic authority, and in accordance with the present document, we make known to all Christ's faithful that those who, not having their own parish priest to hear mass, attend masses on Sundays and feast days in the churches of the Mendicant Orders, do not thereby satisfy the Church's precept regarding hearing mass, nor incur any stain or moral sin.

Saint Pius V, by his Apostolic Letters, dated the 17th of the calends. September 1567. defined: Christi fideles audiendo missas in ecclesia fratrum hujusmodi diesbus dominicis aut festivis præcepto ecclesia de illis audiendis satisfecisse censeantur. Clement VIII. in Brevi quod incipit Significatum, dato anno MDXCII., haec statuit: Praesenti nostro decreto sancimus, secularibus universis libere missas diebus dominicis et aliis majoribus festis audire in ecclesia tam Fratrum Predicatorum quam aliorum Mendicantium necnon etiam Societatis Jesu licite posse dummodo in contemptum parochialium ecclesiarum non faciant.

Nevertheless, there are not lacking authors, among whom Juvenal in his treatise on the Sacraments, book 8, question 7, chapter 2, article 2, and Van Espen in his Jurisprudence, title 5, chapter 2, defend the position that it is not lawful for faithfuls even today, except through grave sin, to consider it more important to celebrate divine worship on more solemn days of festivity elsewhere than in their own parish; for this does not accord with common law, cap. 4. Dub. 5. Which excuse from hearing Sacramentorum 455 they defend: "neque (etsi id consilii sit) preces interim alias loco missae dicere, ut" habent 5. q. 44. "Prima causa est impotentia, vel simpliciter, vel moralis, aut diffi-degradatum, aiunt, per praefatas Constitutiones, quibus potestas fit secularibus missam audiendi in Ecclesiis Regularium, quoniam in illia haec adjicitur limitatio, nimirum Dummodo id non faciant in contemplum parochialium Ecclesiarum: est autem impossibile, pergunt, contemptum abesse, cum iidem, sineulla rationabili causa, à propria se subducunt parochia.

But this explanation entirely overturns the aforesaid Indults of the Supreme Pontiffs: for there was no need of any privilege to enable the faithful, on legitimate grounds, to attend another Church for the celebration of Mass, which is evident from the very provisions of common law; wherefore, lest we speak ill of Leo X. We must necessarily admit with Axius, in book 7, chapter 6, paragraph 4, at the end, that Pope Pius V and Pope Clement VIII have spoken with such words, and have not granted any special privilege to Regulars. Fagundex, lib. 3, cap. 3, num. 9, aliisque ab his citatis, nullo contempsisse, ab illis intelligi actum aliquem distinctum ab ipsa auditu sacri extra parochiam, quo quis sive expresse, sive tacite, se a proprio pastore aversum ostendat.

But, as we have said, they confine the liberty solely to hearing a divine office in any church on any day of the year by regulars. What, however, is to be said regarding other churches, which have received no privilege from the Apostolic See in this matter? Today it is entirely for men to be present in any church, except where a chapel or private oratorium is concerned, to interest themselves in sacred mysteries, because contrary custom, received throughout the whole Christian world, has derogated from the precept of hearing the parochial Mass; so teach Sylvester.

Mass 2. quaest. 5. Nearanus manualium caput 21 numerus 5 tomus 1 liber 3 caput 1 dubium 6 numerus 5 pluribusque allegatis Barbosa in collectan ad de observatione et evitandae in celebratione missae numerus 21 de officio et potestate parochialis capitulum 11 numerus 14 et seg. addentes insuper non posse hodie Episcopum praecipere suis subditis ut se sistant missae parochiali quia non potest delere consuetudinem qua cum vigeat in toto orbe jam induit naturam juris communis. And indeed, when we turn to the civil law of the Church, Junius cites at the end 5, admits that it could be abrogated by legitimate prescription: and Van Espen, although he contends that it is minimely abrogated in Belgium, yet confesses number 15, that bishops customarily admonish and exhort, but do not compel the people through any judicial act to attend the parish Mass.

Moreover, it did not ordain that the people be compelled by precept to this, but rather invited them thereto by exhortations; so decreed the session of Trent 22 in its decree concerning what is to be observed and avoided in the celebration of Masses, where it allows bishops in this manner: Let them admonish the same people that they frequently attend their own parishes, at least on the Lord's days and greater feasts. Saint Charles Borromeo, obedient to the Tridentine decree, in his provincial council of Milan. Act.

Eccl. pag. 302. nò omni abstinens praecepto, plures adduxit rationes, quibus plebem ad parochialem missam suaviter adduceret: Hde nostra monitione, inquit, eos universos, et singulos cohorta-mar, ac per viscera misericordio Jesu Christi obsecramus, atque obtestamur, ut, quamvis in suis vicinii, oppidis, et suburbiis, oratoria, capellas, aliasce Ecclesias habeant, ubi sanctissimo missae sacrificio interesse possint; frequenter tamen Dani-niciis saltem, aliisque solemnibus festis diebus, ad suam quique parochialem Ecclu-siam conveniant, ubi à parocho, cui eorum cura commissa est, verbo Dei parcantur, Fidei Christianae rudimentis, aliisque animarum salutii necessariis praeceptis eru-dientur, ad sanctissima sacramenta religiosius percipienda instruantur. They have recourse equally to exhortations and persuasions. John Ribera, Servant of God, Archbishop Valentinus, in his diocesan Synod held in the year 1584, tome 4, page 285.

Saint Toribius, Archbishop of Lima, in his diocesan Synod held in the seventh year after his accession, in the year 1592, ibid., page 689, and other bishops likewise in the Synodal Constitutions at Gmelin, tom. 6, tract. 4, cap. 7, Question 8. If the Bishop of Middense had adhered to those precedents with his own Constitution expressed by words causing notable inconvenience either to himself or to his neighbor: whether in respect to the body, or goods, or even honor; because this is the mind of the Church, as it were a discrete and benevolent mother, prescribed. Bonac. d. 4. q. ult. p. ult.

7th question, 41st article, 85th paragraph: Only as an exhorter was he liable to no reproof; but because a precept was added, this had to be expunged; just as it had been previously expuncted by other similar synodal statutes at the bidding of the same Sacred Congregation, as can be seen in Azorium, cited chapter 6, question 6, in leg. question 1258. Barbosam loc. cit. atque in declarationibus ejusdem Sacrae Congregationis impressis Lugduni anno 1640 num. 11. The greater obligation could have been incurred by the imposition of God's Word to be heard in one's own parish.

That same one from Trent uses words solely as exhortations when speaking about hearing Mass in the parish church: He admonishes the people: Speaking about the listening to the divine word, he adds other words which seem to constitute a precept and an obligation: And the Bishop shall also diligently admonish (says session 24, chapter 4 on reform) each one of his flock to be concerned where it can conveniently be done, about hearing the Word of God. The same distinction he observed, who did not diligently ponder the Tridentine word, Saint Charles Borromeo in the recently cited Milanese Council VI, loc. cit., p. 301, where it reads: The

Sacred Tridentine Synod acutely commanded the bishops not only to admonish the faithful frequently to attend their own parish churches at least on Sundays and greater feasts; but also diligently showed that each one should take care, wherever convenient, for his parishioners to be interested in hearing the Word of God. When the word of God is to be announced and explained by parishes either directly or through others immediately after the celebration of Mass according to the decree of the same Council of Trent, session 22, chapter 8, Cardinal Bona in his work on liturgical matters, book 2, chapter 7, number 6 notes that this custom has never been interrupted from the beginning of the Church until our times, namely that immediately after the Gospel a sermon, or homily, or tract should be given to the people: hence if faithful persons were constrained by this precept to hear the word of God in their own parish, they would also be bound to attend the parish Mass, which we have declared to release them from any obligation.

To avoid this difficulty, various Doctors have recourse to different ways. Suarez de Religione lib. 2. cap. 16. num. 10. opinatur, ideo Tridentinum verbo teneri eam addidisse limitationem, ubi commodè id fieri potest, ut tali pacto significaret, sibi in animo non esse, fideles absoluto praecepto obstringere, sed tantùm monere, atque hor- tari. Concerning this, Suarez says: If some precept presses for hearing God's Word, that is not from the positive law of the Church, but from the law profitable to charity, which each one owes himself, namely, to take care of his own soul, not only by employing means simply necessary, but also useful ones, such as often listening to sermons.

Although charity law does not oblige to hearing a sermon in the parish, Suarez nevertheless goes so far as to say that the Tridentine Council named the parish because there it should always be preached by the priest during the solemnities of Masses, which is also something decreed elsewhere by the Tridentine Council. Rodriguez, acceptans eamdem doctrinam Quæst. Regul. tom. 1. quæst. 43. art. 7.

It teaches that the Tridentine should be understood as follows: when, according to the precept of charity, one seeks nourishment from the divine Word for oneself, this can nowhere be heard more conveniently and profitably than in the parish church. In idem recidit, quod tradunt Fagundæz lib. 2. cap. 1. num. 10. et Bonacina disp. 8. de tertio Decalogi praecepto quæst. unie. punct. 2. num. 27. et seq., nimirùm, tunc solùm teneri fideles parochiali concioni interesse, cùm necessaria Fidei rudimenta, quæ ceteroquin ignorant, alibi ad-discere nequeunt; aut cùm praevident, alios suo exemplo pertrahendos ad concionem, à qua secùs, non sine gravi eorumdem animarum dispendio, se subducerent: quem

tamen osum moraliter impossibilem, rectè simul advertunt. But perhaps better Zerola in the preface part 1. verb.

They all think that the obligation, if ever there was one, to listen to one's own parish priest and speak words addressed to one's own people has now been removed by the contrary custom. The second cause is any reasonable motive whereby someone thinks in good faith that he can excuse himself.

It is seen from section 6, chapter 5, chapter » that any moderately serious cause excuses one from hearing mass; namely, those which involve a notable some inconvenience, or damage to the goods of one's own soul, or body, or of one's neighbor. Ita communiter cum Bus. DD. ap.

Cross L. 3. p. 4. n. 675. miss. c. 6. punct. 5. n. 63. Mazz. de tertio praemio cap. tres. sectio secunda et Zachar. libri tertii partis quarta n. 575 cum. Fill.

Tanner, etc. Correctly does he teach in n. 62, that one who possesses the privilege of oratory is not bound to bring a priest so that he himself may hear mass. But what if the mass is already said gratuitously, or can easily be had gratuitously? Escob. and n. 61. with Fill. think that he is still not bound to hear the mass, even if excused otherwise, because the privilege is given as a favor, not as a burden; and therefore no one is bound to use his own privilege, lest the privilege itself become burdensome. They nevertheless say that he is to be held responsible, according to Decretals, before article 2, section 4, conclusion 4.

But this n. 2 and Croix n. 676 with Lugo, I think the same should be said, namely, if you can provide a priest at a small stipend, because everyone is bound to endure a light inconvenience in order to satisfy a precept. Whereupon the resolution: 325. — « 4. They are excused who are in navigation or prison. Item: during illness, or in convalescence, when it was difficult to go outdoors.

Item qui sunt in excommunicatione, vel interdicto, de quibus suo loco. The sick are excused when they prudently fear some notable harm or delay in recovering. Thus commonly DD.

Caj. Soto, and others, in the sixth question of the sixth book, point 5, note 58, and before note 366, according to whom Gob. with . But what if there is a doubt whether the inconvenience is slight or sufficiently serious?

It is to be held by counsel of the physician, or of a superior, or of the

parish priest, or of some prudent man; and even the sick person himself may assent thereto according to his own judgment, if he prudently so judge. But what if, even after seeking counsel, the doubt remains? Suarez says, then a dispensation must be sought; but Suarez and n. 59 absolutely say that he is not bound to Mass; because, in the presence of a serious risk of harm, the Church's precept then does not possess authority against the sick (4); and the same thing Lugo feels: at least (says Gob.) it must be judged that, in such a case, the Mother Church is not obligated.

See Cross ibid. It is very probable according to Mazz. l.c.: An excommunicated or interdicted person does not commit a sin by omitting Mass; and similarly, if incarcerated, even if they neglect absolution or freedom, because such persons are not bound to remove remote impediments. It is common against a few authorities according to n. 53. with .

Now, however, as they well observe in 3rd [book] chapter 4th number 26 and 365, they do not therefore neglect the liberation from the purpose, so that they be bound to attend Mass. But Bonac. more probabily says: And because each one is bound to remove impediments when there is slight inconvenience, that he may satisfy a grave precept... 326. — « 2. Moreover, those who guard the camp, the city, the flock, the house, "infants or a child (who in the temple cannot be contained without disturbance by others), or provide solace to the sick, or cook and perform similar tasks which cannot be omitted. 86.

and 314. Therefore, those who guard houses or flocks are excused according to the common rule with reference to . 4. tract. 5. c. 4. n. 3. Palao t. 22. concl. 4. num. 2. in fin.

Bon. d. 4. q. ult. n. 3. et n. 68. If there are several guardians and one mass is said, they should hear it alternately. Thus n. 68 and so forth. And similarly, if a husband or wife must remain at home for the sake of custody, the husband cannot compel her to remain always at home, since she is a companion, not a servant, who could be compelled in reverse; but also the master himself might remain at home sometimes, that the servant might hear Mass, for the utility of this would excuse the master.

Thus Croix with Steph. and Gob. In like manner are excused mothers from hearing the Sacred Matins, who do not have at home someone to whom they could leave their children without danger, and on the contrary they would not be able to bring them into the Church if it were done with notable disturbance of those present. Thus Bon. l.c. n. 2. and et et with

Probabiliter excusatur etiam who fears imprisonment if he attends Church. oum ac Zach. l. 3. p. 1. n. 689.

Even he is excused who cannot hear mass without leaving the sick without assistance at food, or for remedies to be provided; or who, if left by him, the sick should suffer a grave disturbance. Thus concerning point 5, number 76. And this, even though another assistant might be present, the sick person would think that the assistance of the other was necessary for him, and otherwise he would suffer a severe sorrow.

Thus and 327.—" 3. Moreover, for whom the danger of a grave offense to the husband, parents, » or masters is. Henry. » Servi excusantur, quando ministerium suum est communiter necessarium et illud omittere nequeunt sine gravi incommodo domorum; tamen debent adhibere mediam diligentiam ut missam non omittant: ita 88. sectio 6. n. 5. 3. sectio 4. conclusio 4. loci citati et n. 74. cum in fine cum .

If the ministerium is not so necessary, undoubtedly the lords sin if they hinder the sacred hearing. But the servants are bound to hear mass then even against the lord's command, unless they fear great indignation; or unless immediately and easily they could not find another lord, as Croix says in l. 3, p. 4, n. 685, cum 22, p. ult., n. 6. Whatever Sporer says in III. prae. c. 4. n. 34 and n. 75 etc., those who feel so believe that famuli are always excused through several vicissitudes.

Mazz. notes in d. 5, §. 2, that the lords very little sin if they command the servants at the time of Mass, which cannot be deferred according to the common mode of living (understood without notable inconvenience to themselves). And then indeed the servants are also excused if they are occupied with actual and necessary service during the time of Masses, as is said in d. n. 34, cum etc., as above. Thus equally excused is the wife, if from her approach to the Church she fears a severe indignation from an angry or zealous husband; similarly, if it be slight. Commonly . 5. c. 6. punct. 5. n. 68. num. 369. sed hoc raro admittendum.

From a just cause, notes Croix n. 688. with 328. — "4." Moreover, if anyone would otherwise lose an opportune occasion of a convenient journey, for example, companions, when he does not know the way, or fears dangers, he is nevertheless bound to go to Mass before the journey, or during the journey. Suarez sectio sexta.

The traveler is also excused if he would otherwise lose expenses that his associate would incur, as stated in Croix n. 582 and n. 69. And if more

serious expenses should be incurred by him if he were to relinquish that opportunity, for the sake of hearing a sacred word, as it is added in the cited text. Or if he were not secure on the journey without a companion. Or if that society greatly alleviated his burden, and the long road removed weariness, which certainly appears to be a serious inconvenience, or at least is closely connected with the risk of a serious inconvenience, as stated at Croix ibid. 329. — « 5. If there is a great difficulty in going to the Church on account of distance, for example, one or two miles according to the Roman mile, or even less space: especially if the way be troublesome, and heaven rain.

Where there must be considered the reason of persons, places, times, and customs. Bon. . 6. n. 7. For excusing distance, some assign three miles, others two, and others one.

But this must be judged from the circumstances of the person, time, etc., as Bus. Live. . n. 65. from common. Ordinarily, however, the mileage distance does not excuse, as rightly says Croix n. 687.

But the diocese castellan at the place itself in ibid. does not oblige noble women and maidens to a distance of 4500 paces; it obliges rather those of moderate status and rustic folk to a greater extent. On the contrary. I. 3. p. 4. n. 687. and Croix hold the same, saying absolutely, that a distance of three miles excuses all. 330. — « 6. If according to the custom of the country women do not usually go forth from home during mourning time, or even after childbirth.

Sylv. Cajetan et Exclusantur igitur viduae ratione luctus, ut et 384 ac etiam filiae et sorores (1), ut addit Mazzuchelli cum . Villal. et alii) do not consider the period to be extended as far as a month from the death of the husband.

Saint Charles Borromeo permitted only a month in the council. Milanensis. Although, if there were another custom in some place, that it is not to be condemned as a grave sin, this is taught together with the rest according to n. 82.

Those, however, who are already departing from home for other places, are not to be excused, as correctly noted; they are excused from going out in public so that they do not go forth to the public, n. 84 with Fill., who, however, together with Azor and others, rightly points out that a moderated custom should be regulated as much as possible (4).... 7. If anyone does not have garments suitable for his station. Navarr... c.... 8.

If any who is pregnant from hidden fornication should fear that it be made known if she were to go forth, 4. t. 5. Bus. and women lacking decent clothing according to their station, or servant, or companion, without whom they would blush greatly, as Mazz. says in the same place. They rightly warn 5. de Sacr. miss. c. 6. punct. 5. n. 64., etc., that they should not very much avoid hearing Mass, if possible, even in a remote church where few people congregate. The same is said of an unhonourably pregnant girl, if she could hear Mass secretly and without notice in some place. Thus commonly with Bus. infr. Decal preeo. art. 2. sect. 4. concl. 4. n. 2.

Who sacred, and ibidem in fine. Thus too girls who leave the Church can sometimes be excused when proclamations are made for their marriages, even though they omit this for that reason. Holy, if on account of this they should bear notable bashfulness.

The same is understood by no. 35 regarding noble women. This however, I think can rarely and difficulty be admitted; but if out of respect the maiden would suffer this very blush which would cause her great inconvenience in that case, I do not approve it. But Croix, n. 690, absolutely excuses such maidens where this kind of custom is present.

Similarly, custom excuses women who are confined at home for some time after childbirth (e.g., for six weeks according to common usage, as Sporer and others have valued it, 35:384 and n. 79. with cap. mulieres ob menstruum. n. 80.. 334. — « 9. If she knew it, and it were sought by one whom she had lost through love, she would follow him, seeking an occasion of sin if he were to betray her. Therefore, "A great question is: whether a maiden knowing that she is being turpidly concupisced by someone can omit the Mass?"

Three are the opinions.. The first, which they hold [i.e., those who maintain it], chapter 13, note 10... the precept, chapter 1, notes 29 and 37. Salmant. ibidem num. 77.... says that she can; and even twice or thrice omit it... The second opinion holds that she is allowed to hear mass, notwithstanding the ruin of another, which happens voluntarily to her. (1) « No reason at all can be considered legitimate for that custom (as I prefer to say, neglect) whereby a girl abstains from hearing Sacred Scripture in public so as not to go out into the public. From Exodus 6, note 42.

Thirdly, § 2, who asserts that it is common with . according to the teaching, that she can indeed omit it in order to avoid the neighbor's harm,

but cannot be compelled, for he uses his own right and suffers harm through his own culpability. All these opinions are probable, but the first is more probable. Reason why the natural precept concerning the avoidance of scandal is to be preferred to the positive precept regarding the hearing of mass.

On the contrary, because charity does not obligate when there is a great inconvenience, a girl is not bound to abstain from Mass more than once, or again. See what has been said about charity in book 3, no. 54 and no. 53, 332. — Here it is asked at the end whether the loss of notable profit excuses one from hearing the Sacred Service? They deny. 23. de 3. præc. c. 4. punct. 14. §. 3. n. 345.

But the learned P. sufficiently probingly affirms, præc. c. 4. n. 258. 3. n. 7. Mazzotta loc. cit. 368. cum Anæl. Diana, cum Azor, ob eamdem rationem, qua diximus supra n. 304 excusari, qui ne amittat extraordinarium lucrum laborat die festivo ex ratione generali quia præcepta ecclesiastica non obligant cum gravi incommodo.

Gob. also holds that a poor person may be excused even for the sake of a profit of one and two pounds, however slight the fortune may be. And unjustly 5. de Sacrif. miss. c. 6. punct. 5. n. 69. cum circa fin. But the Doctors say and excuse those whoresons which cannot hear the Sacred [texts] lest they leave the conveyance with notable loss.

He also says concerning scribes and custodians of barns who fear a notable loss: similarly he says concerning sailors and carriers of merchandise who cannot hear mass without great inconvenience. But we do not admit that some AA. add to what follows. Croix l. c., scilicet, quod, licet quis possit sine tanta damno omittere vecturam, tamen ille potest excusari ex consuetudine aliorum, quam habent vehendi.

Likewise in ibid. they say that the carriers might be excused if through the cause of the mission they should incur a moderately serious loss. However, it is very probably excused, he who ought to omit a business with considerable damage in order to hear Mass, etc., according to 5th chapter, 6th paragraph, point 5, note 70. Non excusat autem ex communione cum qui omitteret Sacramentum pro alio bono spirituali, quamvis maiore.

However, it is admitted probabiliter ibidem that he may be excused who omits Mass to confess his sins, if otherwise he should have to remain for some time in the state of mortal sin; and the same holds true according to Croix: likewise those are excused from Mass who otherwise would not be

able to prevent blasphemies, quarrels, thefts, etc. ## Caput 2. Doubium 4. But it is held that peregrins are bound to hear mass, which is to be heard according to a special precept in the place where they are, even if they remain there for one day?

They affirm. I. 4. e. 44. a. 9. Pont. de matr. lib. 8, cap. 4, num. 7. Josephus on law d. 4, p. 24, n. 42, who merits probable that term when [citing] c. 42, n. 37, and c. 3, punct. 5, § 4, n. 56.

Reason, because foreigners truly become subjects of the superior place where they are, even though they may remain there for a brief time. However, they deny it more probablistically in . c. n. 38. with . q. 4. p. 6. a. 6. and 43. Syllogismus. V.

Fasting q. 2. n. 7. . præc. n. 383. item S. ibid. n. 58. Reason, because the superior place does not have jurisdiction over foreigners, unless they remain there or at least intend to remain for a greater part of the year, according to what is said concerning the law lib. 4. n. 456. Here it refers to annotating what Benedict.

XIV. In Brevi, Cum sicut, etc., dato die 22 Dec. 1748, quoad regna Neapolis et Siciliarum, indulserit ab abstinentia operum servilium diebus festis, exceptis Dominicis Paschatis et Pentecostes ac omnibus aliis Dominicis in anno: item die Circumcisionis, Epiphaniae, Ascensionis, Corporis Christi, Nativitatis Domini: item Purificationis, Annuntiationis, Assumptionis, Nativitatis, et Conceptionis B. V. M.

Immaculate, likewise on the feast day. Peter and Paul, all saints, and the principal patron of any city or village of that diocese; in other feasts he has prescribed that faithful people should hold out so much to hear mass. ## CAPUT II. OF THE FOURTH COMMANDMENT: Honor thy father, etc. ## DOUBT I. ### To what are children bound in regard to their parents? 333.

What are children bound to do for their parents regarding love? 334. What concerning reverence? 335. What concerning obedience?

See others ibid. 333.— “Resp.” They are bound by the force of this precept both toward parents and superiors in those matters in which anyone is subject to them, to render love, reverence, and obedience, so that if a notable defect in these regards should occur in a serious matter, a grave sin will be committed; which will more easily happen with regard to parents than to others. Just as commonly.

See p. 2. c. 4. etc. ## Where it is resolved: « 4. Against a grave love, the son sins I. If it shows signs of hatred towards parents and treats them harshly.

II. If he always regard them with a gloomy eye and sharply reproach them in such a manner as if he hated them. III. Si eos torvo oculo ferè semper intueri, ac ita asperè loqui, ac si eos odio habeat.

If » he does not come to their aid in a great spiritual or bodily necessity. Herefore also gravely do the children sin, neglecting that prayers and sacrifices be offered for their parents. . 24. c. unic. punct. 1. §. 1. n. 4. IV. If it does not fulfill their testaments and legacies, even then the heir is liable.

V. Si non impleat eorum testamenta et legata, modo haeres sit. If a serious evil, for example death, be desired by them. Chapter 20, note 8. » c. 1. q. 3. et 7.

Therefore, gravely do the children sin if they do not take care that, when parents, being constituted in the article of death, receive the sacrament of penance and other things. Bonaventura de IV. praec. p. 4., n. 5. in fine cum Azor: Item, si impediant parentes quominus faciant testamentum. Bon. ibidem.

That is understood to be immune from any guilt if they are impeded by evil arts; but if they do it in permissible ways, then they will be free from all blame. 334. — « 2. It grievously sins against reverence, the son of God. If he strikes "even lightly according to the Rule."

II. If he raises his hand to strike, even lightly, according to the Rule. Thus all commonly; and rightly Spor. adverted in the fourth precedent chapter, c. 5, n. 32, that the son sinned in two ways therein, against justice, and against piety. III.

If parents grievously afflict. » Reg. l. 20. n. 24. n. 17. » (Even though the words are not grievously contumelious, as Busemb. says more below and Bonao. in 4th precept p. 3 n. 4 against that title no. 557 says that it is not mortal if the parents' anger does not arise from the very word or deed, since this is only slightly injurious but from a wrong apprehension or their disposition; for then grievous reverence is not violated, at least grievously is violated love towards the parents, to them being gravely and deliberately grieved without just cause.) « IV.

If with deliberate intention he provokes grave anger by words of contumely or similar ones, knowing them to be such as would gravely offend. (Hence rightly does Roncag. say in chapter 4 of preface 4, rubric 4: 'Before the act mortal sin is not excusable who calls his mother crazy, drunken, beast, witch, thief, and similar.) Qui vero diceret tantum vecchia, stordita, ignorante, et similia, puto non posse de se absolutè damnari de mortali, nisi parens graviter de his verbis offendatur. Filius autem peccat graviter, qui parentes suos frequenter torvis oculis aspicit, vel verbis asperis alloquitur, ita ut eos videatur habere in dìdio.

Graff. . 550. Roncag. r. 2.) "V." If it casts a curse or a vice upon them.

» (when Dec. prae. cap. 4. art. 4. sect. 2. concl. 2. n. 2. Understand in the present, as we shall see in the subsequent annotation. Furthermore, if parents knowingly express laughter or a mocking gesture, as Sporer n. 31 and others state.

It is said deliberaté, for in these and similar cases, as mentioned above, sons are excused from mortal sin on account of lack of deliberation in the act, as Bonaventure states: «VI.» If parents disdainfuly or unwillingly neglect to acknowledge the poor. That is, if nevertheless he merely dissimulates externally, knowing them but not wishing to have them with him for just cause, except that he provides for their necessities reasonably, then he is excused from a grave sin, because they are not properly invited.

Here it is probably probable according to ... preface. point 1. section 4. note 5. Azor, et si gravis damnum passurus esset, 2. si pa- reutes infami crimine essent notati, 3. si solum exterius dissimula-ret, sine interno contemptu, quia tunc (ut ait Bon.) ipsi parentes non censentur graviter, aut rationabiliter inviti.) « VII. If in external forum the son accuses his parents even of a true crime; outside the crime of heresy, treason, or conspiracy against the prince, since there is no other mode of correction.

See Bon. loc. cit. Absolutely Sporer d. c. 5, n. 30 et 34 says that a son who speaks evil of his parents or mocks them is not excused from mortal sin, whether he does this in their presence or in their absence. I know not how this author, although in his other judgments sufficiently equitable and perhaps sometimes more than due lenient, could absolutely assert this: for himself confesses in the 8th precedent chapter c. 6 n. 435 and all teach, that reverence or honor is not injured unless contumely be received in presence of the offended; or in absence, but so that another may be restored. Furthermore, it is added what many grave doctors say, as article

3, question 4, number 230.

Pontius de matr. l. 40. c. 40. n. 45. (et asserit commune) . 5. c. 8. n. 44. n. 256. in fin. item Azor, de matr. c. 45. punct. 5. n. 64. ajunt enim præfati AA. per copulam fornicariam occultam in Ecclesia non committi sacrilegium, nec pollui Ecclesiam; ratio, quam tradit Coninch. quidquid quia reverentia Ecclesiae debita consistit in opi- nique hominum, sicut fama: ideo, sicut homines non fiunt infames, nisi crimina innotescant, ita reverentia loci sacri non violatur, nisi publicæ pateat de crimine. Whatever there is in this opinion, which is sufficiently probable according to what they say [n. 65], although it be more probative against me, because then irreverence is imputed to God who assists specially in the Church and regards all things hidden; see below concerning six precedents n. 458. What concerns me here is the reason adduced, namely that reverence is not injured except through the manifestation of contumely. How therefore will the son greatly sin by clamorously cursing the parent, or by laughing at him in his absence, since then neither contumely nor irreverence is present?

And I think that this ought to be said, even though he does this in the presence of others. Attamen non nego in hoc adesse quamdam vilipensionem exercitam, repugnantem reverentiae parentibus debita, specialemque malitiam contra pietatem continentem, sed qua non pertingit ad peccatum mortale; nisi casu, quo filius eis malediceret animo malevolo, aut cum magno contemptu; nempe si malediceret coram aliis eo fine, ut illi deinde parentibus deferant, vel forte saltem praesumendo, quod deferrent. They say, however (rather inconsiderately), they do not explain whether a curse is pronounced with a malicious mind or without a malicious mind.

But nevertheless it must be entirely understood that he does not greatly sin if he maledicts without such an evil spirit. And indeed. Chapter 42. Verse 5. Sixthly, he says that a son commits mortal sin by cursing his father from the heart, whether the father be alive or dead; yet if he has merely spoken in anger without more, he has offended no more gravely than venially.

That is confirmed by almost the same words in n. 47, 335. — "3." I. Contra obedientiam graviter peccat filius. If in a matter grave disobedience exists concerning those things which pertain to the governance of the household, good morals, or the salvation of the soul.

II. If against the will of the father of the household, the wife leads him to take an unworthy one for himself. It is called indigna, "with whom it cannot contract without disgrace, according to the custom of the region;"

(See what is said about marriage, book 6, no. 851.) "yet for this reason it cannot be disinherited" (See no. 949.) III.

If he does not wish to marry her whom his parent desires without just cause, especially if thereby the hatreds might be appeased or the necessity of the parents alleviated: then there will be a just cause, for example, if the family is unequal, weak, deformed, foolish, or uncorrected. IV. If, after consulting the parents, he contracts matrimony (On this see regarding marriage, law 6, no. 849), as it is held; when concerning the election of his own status according to his right. . 2. c. 40. n. 43. . 4. c. 15. n. 20.

A child, and how it sins by stealing from its parents? See below, n. 543. Item, can they alienate goods? see infra n. 918. Therefore, the son is bound to obey his father in what has been said shortly, and gravely sins by a special sin in confession explaining it, if the matter be grave, and the parent has given an express precept, and seriously commanded it; otherwise, if he merely admonished, as previously stated in chapter 5, number 14, question 3. And Lugo adds to penance, decision 16, number 226, and Bonaventure similarly in the same title part 6, number 3: when then the son commits this special sin by obeying his parent who commands something with intent to obligate him to render the obedience due.

But Sporer says in n. 16 and de 4. praec. n. 555 with March., then a son gravely sins when he transgresses an ordinary precept; similarly, if he does so repeatedly out of negligence. Moreover, it is to be noted that children are not bound to obey in matters pertaining to the choice of a state. Hence gravely sin commit parents who constrain, even indirectly against their will, to the choice of a life state, whether religious, clerical, or conjugal; or conversely, if they unjustly withdraw them, even without force or fraud, from the religious, clerical, or conjugal state, without just cause; for it especially devolves upon parents to concern themselves with the spiritual welfare of their children.

Thus it is stated in decree 54, note 2, and with the common consensus. Wherefore, si the son feels himself called by God to the religious or clerical state, and perceives that his parents would unjustly hinder him, he will more prudently act by concealing the matter, in order to fulfill the divine will. Thus C. Bon. l. c. n. 2. with Sair.

Molf. Fill. and others. It was however spoken unjustly; for it should have been said otherwise, if the parents were to contradict justly: namely, if they remained in necessity; or if otherwise the most noble family would be

extinguished, as he says, 539.

In hoc tamen secundo casu puteo non teneri filium ob id suam vocacionem desertare. See elsewhere, where on this matter extensively spoken is found in book 5, note number 66. "4." The offspring is bound to nourish poor parents so far as they cannot otherwise be assisted in grave necessity; and it is held that he should remain in the world (unless indeed there loom upon them a certain or very probable peril to salvation); see below concerning the state of religion, l. 5, n. 66, where also brothers are treated of, n. 70.) and if he has entered religion, he is bound to leave it in order to assist his parents: provided that their necessity precede his profession.

» (See dictionary l. 5. n. 67.) « 5. If however necessity should supervene after profession, if it be extreme, he is bound to leave [the religious state], provided permission be sought beforehand, even though forgiveness may not have been granted. If however it is only a grave necessity in which they can live in any case, one is not bound to remain; nevertheless, one may leave if the prelate permits.

In what case is one bound to defer the habit and observe the substantialities of religion, but after having provided for his parents, to return? See 2. c. 44. dub. 3. » (See below regarding the state of religion, book 5, note 67.) DUBIUM II. To what are parents bound towards their children? What are the obligations of parents to provide food and education for their children? Does a father have an obligation to provide dower for his daughter against her consent? The Neapolitan sanction regarding the provision for children’s sustenance. To what else are parents bound? To what are brothers bound? Can parents ever be justified in disinheriting their children, and on what just cause? (See also notes 948 and 949.) Parents, by whose name ascending relatives such as a grandfather, great-grandfather, etc., are also understood, are gravely obligated according to the law of nature to care for and educate their descendants.

Regarding « what is discussed in question 4. » Azor, p. 2. l. 2. q. 17. Fill. tr. 28.

c. 2. These cases are resolved: 1. Parents gravely sin when they expose their offspring without just cause in a hospital or public places. See Bonaventura here; and on page 2, chapter 2, and below in treatise 5, chapter 1.

A just cause exists if the offspring be illegitimate, as probably Salmantica

states in IV. of precepts, point 2, n. 36. See regarding restitution n. 656.) A mother is bound (under a venial sin nonetheless) to nurse her own child with her own milk, unless she has a just excuse (such as being weak or noble due to custom). Then indeed she is gravely culpable for seeking out a good wet-nurse. » If however the mother cannot nurse, the father is bound to provide for the cost of nursing, Croix l. 3, p. 4, n. 697. «

And with regard to the common: "Afterwards, education, up until emancipation, pertains to the father." Receive it, unless this man were not poor and the mother rich. Fill. . 5. tr. 4. c. 3. n. 4.

Regl. 20. n. 32. (4). "3." A father is bound to provide for his offspring, not only for legitimate ones, but also (in which the civil law has been corrected according to c. Cum haberet) for illegitimate ones; he must take care of their nourishment, that is, food, drink, clothing, and honest arts, according to his state, unless he can otherwise provide for himself and not be in need; moreover, also a dowry for the daughter. "However, regarding the children, they say: L. 4, D. 26, n. 21."

Master on the Effect of Matrimony, page 2. » c. 4, num. 95: When the Glossa comments on chapter Admonere, section 33, question 2, concerning Surdus et Me-gala, it is stated that the father is bound to provide sustenance not only to his son, but also to his wife, even though he married her without dowry; and contrary to the will of said father. Moreover, Azor holds in book 2, chapter 4, question 12, and Merenda Controv. in book 4, chapter 34, note 6, with Baldus and Jason, that a father should nourish his son even if the son has previously received an inheritance corrupted by vice. Indeed, even clerics are obliged from the fruits.

(1) In the new law, the provision abrogating the ancient law according to which the mother was bound to provide sustenance until the third year, while the father was bound until emancipation of the offspring, has been abolished. The obligation to nourish, sustain, and educate offspring is common to parents according to the Civil Code, article 203; it affects them jointly. — Compare articles infra under note 931.

Published Chapter 2. Doubt 2. Buses ecclesiasticis possunt haec suis spuriiis praestare. c. 2. n. 28. . 5. t. 40. p. 3. c. 5.

See below translation 5 chapter 4. » d. 5. q. 1. Here they sin.

If they do not employ diligence, at least let them have a regard for their

diocese, so that they may acquire goods with which children are nurtured, and have provision according to their state. If by dissipating goods they render themselves destitute, so that their children may be educated and married honorably according to their station, Bonac. d. 6. §. 2., ex Azor: if they refuse a dowry to their daughters (or disinherit their son), for instance. because she wishes to enter, or has already entered, religion, or because, having been invited herself, she has married, although she be unworthy.

Bon. l. c. ex Azor, Reginald. etc., vel quia filius ordinem sacrum suscepit: sicut enim pater tenetur dotare suas proles pro matrimonio, vel ingressa religionis: ita etiam ad suscipiendos sacros ordines. Neither is this donation revocable: nay, what has been given in such a manner cannot be reckoned in legitimate division or partition with brothers; yet on the contrary it holds that t. 6. r. 91 and 92. » (And from the Fourth Precept, point 4, section 2, note 78.

See also the discussion in contr. n. 956, where see also regarding other goods to be brought in collation for the children. The question is whether the father is bound to endow his daughter with a dowry against her will upon her marriage? Distingue, affirmas, si filia sit nupta majoris aetatis iam viginti quinque annis, etiamsi indigno, ut l. 4, d. 26, n. 11, punct. 2, n. 40 cum. Good. But the greater doubt arises if the bride is under twenty-five years of age?

Others affirm absolutely: others, only if she has been married to a worthy person: others say that the father should be held bound only to provide alimony if she needs it; and this is even more probable, although she may have been married unworthily, as stated in 19. n. 41 with Mol. Hence it is inferred from the aforementioned reference n. 42, that even if the son consumes the marriage contract against the father's will, the father is bound to nourish him if he is in need, and likewise his wife. It is to be noted incidentally here, by the most recent decree of the Sacred Roman Neapolitan Council, which was convened with four colleges and sanctioned, to which the Royal Majesty gave its approval on 15 December 1742, it having been decreed that parents are not permitted without just cause, either by law proven justly or by a judge approving, to expel from their home children and sons, or any of them unjustly, and to provide for them outside the house sustenance.

And conversely, children and heirs, or any one of them, do not have the faculty of departing from paternal obedience according to their own will, and of obtaining sustenance outside the father's house; but it is beneficial for them not to indulge in opposition to the parent at that time, so as to

obtain from him outside the home provisions for sustenance, since the children's will is a cause of virtue, not a cause of vice, according to any other interpretation and perhaps the judgment of things themselves. And see the note placed at n. 948. 340 To what are brothers bound? Can parents ever disinherit their children? And what are just causes for disinheriting them? (See also on this point n. 948 and 949.) 336. — PARENTS, by the name of which even ascendants are understood, e.g., grandfather, great-grandfather, etc., are bound by a grave obligation of natural law to care for the conservation and education of children. Concerning which, from question 4. Azor, p. 2. l. 2. q. 47.

Fill. tr. 28. c. 2. These cases are resolved: "1. Parents gravely sin when they expose their offspring without just cause in a hospital or public places.

See Bonaventura here; and "p. 2. c. 2. et infra tract. 5. c. 4." "A just cause exists if the offspring be illegitimate, as stated by Salamanca in IV of the precepts, point 2, number 36." See on restitution n. 656: "The mother is bound (though under a venial sin) to nurse with her own milk, unless she have a just excuse" (If indeed it be that the mother is weak or noble by custom, etc., n. 35 cum., etc.): "Then truly she is bound under a grave sin to seek out a good wet-nurse." Bon. d. 6. q. 4. p. 6. . "(But if the mother cannot nurse, then the father is bound to provide for the cost of nursing, Croix l. 3. p. 4. n. 697."

And with the common: "Afterwards education, up to the point of emancipation, pertains to the father." Receive it, unless this person were not poor and the mother rich. Fill. . 5. tr. 4. c. 3. n. 4.

Regl. 20. n. 32. (4). "3." The father is bound to provide for his offspring, not only for legitimate ones, but also (in what concerns) spurious ones "corrected according to canon law as Cum habet has it," to take care of nourishment, that is, food, drink, clothing, and honest arts, according to his state; unless he can otherwise provide for himself, and does not lack necessities; and furthermore, a dowry for the daughter. "However, with regard to children, they say: L. 4, D. 26, n. 21."

Boss. de effectu matr. p. 2. c. 4. num. 95. cum Glossa in c. Admonere 33. q. 2. ac Surdo et Me- gala, quod pater tenetur proli alimenta praestare non tantum filio, sed etiam uxori illius, quamvis eam duxerit sine dote; et contra ipsius patris voluntatem. Furthermore, Azor holds in volume 2, book 2, chapter 4, question 12, and Merenda Controversiarum in volume 4, chapter 34, number 6, with Baldus and Jason, that a father should nourish his son even if the son has previously received an inheritance

viciously. Moreover, even clerics are bound by the fruits of their office. In the new law, the provision according to which the mother was obligated to provide sustenance until the third year, while the father was obliged until emancipation, has been abrogated from the old law. The obligation to nourish, maintain, and educate the offspring is common to parents according to the Codex Civilis, article 203; this obligation affects them solidarily. — Compare the articles infra mentioned at note 981.

Edit Chapter 2. Doubt 2. Buses ecclesiasticis possunt haec suis spuriiis praestare. c. 2. n. 28. . 5. t. 10. p. 3. c. 5.

See below translation 5. chapter 4. » d. 5. q. 1. Here they sin.

If they do not employ diligence, at least let them have a regard for their diocese, so that they may acquire goods with which children are nurtured, and have provision according to their state. If by dissipating goods they render themselves destitute, so that children may be honestly educated and married according to their station, Bonac. d. 6. §. 2., ex Azor: if they refuse a legitimate dowry (or disinherit the son), for example. because she wishes to enter, or has already entered, religion, or because, having herself invited it, she has married, although she be unworthy.

Bon. l. c. ex Azor, Reginald. etc., vel quia filius ordinem sacrum suscepit: sicut enim pater tenetur dotare suas proles pro matrimonio, vel ingressa religionis: ita etiam ad suscipiendos sacros ordines. Neither is this donation revocable: nay, those thus donated cannot be reckoned in legitimate succession or division among brothers; yet contrary to this opinion holds T. 6, r. 91 and 92. » (And from the Fourth Precept, point 4, section 2, note 78.

See it explained in the contrary at no. 956 of the Contradictiones; also see regarding other goods to be brought forward for collation. Question is, whether the father is bound to endow his daughter with a dowry against her will when she is married? Distinguish, affirm, whether a daughter is married at twenty-five years, even if unworthily, according to lib. 4, decret. 26, n. 11, punct. 2, n. 40. Good. But the greater doubt arises if the bride is a minor under twenty-five years?

Others affirm absolutely: others, only if she be married to a worthy man: others say that the father should be held bound only to provide alimony if she indeed lacks means; and this is even if she has been married unworthily, as stated in 19 [n. 41] with Molina. And this is more probable. Hence it is inferred from the aforementioned reference n. 42, that even if

the son consumes the marriage contract against the father's will, the father is bound to provide for him if he is in need, and likewise for his wife. It is to be noted incidentally here, by the most recent decree of the Sacred Roman Neapolitan Council, which was joined with four faculties and sanctioned, to which the Royal Majesty gave its approval on 15 December 1742, it had been deemed holy not to allow parents, without just cause and based on lawfully proven grounds or with the approval of a judge, to expel from their home unmeritedly their children or any of them, and to provide for them outside the house food.

And conversely with regard to children and heirs, or some one of them, it is not permissible for there to be a faculty of departing from paternal obedience according to their own will, and of obtaining sustenance outside the father's house; but rather that the will of the children not being hindered in their relationship with the parent would benefit them in compelling him to provide sustenance outside the home, since the will of the children is a cause of virtue, not a cause of vice, however otherwise interpreted or perhaps judged. And see the note added to n. 948. Edit. 10 340 What are brothers bound to for a reason? 341 Can parents ever disinherit children? And what is the just cause for disinheritance? (See also on this n. 948 and 949.) 336. — PARENTS, by whom name ascending ones are also understood, e.g., grandfather, great-grandfather, etc., are bound to a grave obligation of natural law to care for the conservation and education of children. Regarding « what is discussed in question 4. »

Azor, p. 2. l. 2. q. 47. Fill. tr. 28. c. 2. These cases are resolved: "1."

Parents gravely sin when they expose their offspring without just cause in a hospital or public places. See Bonaventura here; and on page 2, chapter 2, and below in treatise 5, chapter 4. A just cause exists if the offspring be illegitimate, as probabiliy Salmanticae de IV praecepto punctu 2 n. 36 states.

See regarding restitution n. 656.) A mother is bound (even under a venial sin) to nurse her own child with her own milk, unless she have a just excuse (such as being weak or noble by custom). Then indeed she is gravely culpable if she seeks out a good wet-nurse. » If however the mother cannot nurse, the father is bound to provide for the cost of nursing, Croix l. 3, p. 4, n. 697. « And with regard to the common: "Afterwards, education, up until emancipation, pertains to the father."

Receive it, unless this person were not poor and the mother rich. Fill. . 5. tr. 4. c. 3. n. 4. Regl. 20. n. 32. (1) "3."

A father is bound to provide for his offspring, not only for legitimate ones, but also for illegitimate (in whom civil law has been corrected according to c. Cùm haberet), to care for their sustenance, that is, food; drink, clothing, and the necessary arts, according to his own state, unless he can otherwise provide for himself and does not need it; and furthermore, a dowry for his daughter. "However, regarding the children, they say: L. 4, D. 26, N. 21." Master on the Effect of Matrimony, page 2.

» c. 4, num. 95: When the Glossa comments on chapter Admonere, section 33, question 2, concerning Surdus et Me-gala, it is stated that the father is bound to provide sustenance not only to his son, but also to his wife, even though she was taken without dowry; and contrary to the will of said father. Furthermore, Azor holds in vol. 2, lib. 2, cap. 4, q. 12, and Merenda Controv. vol. 4, cap. 34, n. 6, with Baldus and Jason, that the father is bound to nourish his son even if the son has previously received an inheritance viciously. Moreover, clerics can also provide this for their own illegitimate children from ecclesiastical revenues. Cap. 2, n. 28. See below translation 5 chapter 4.

» d. 5. q. 1. Here they sin. If they do not employ diligence, at least let them have a regard for their diocese, so that they may acquire goods with which children are nourished, and have inheritance according to their state.

If by dissipating goods they render themselves destitute, so that their children may be educated and dowried honestly according to their station, Bonac. d. 6. §. 2., ex Azor: if without legitimate cause they refuse a daughter a dowry (or disinherit a son), for example. because she wishes to enter, or has already entered, religion, or because, having invited herself, she has married, although she is unworthy. Bon. l. c. ex Azor, Reginald. etc., vel quia filius ordinem sacrum suscepit: sicut enim pater tenetur dotare suas proles pro matrimonio, vel ingressu religionis: ita etiam ad suscipiendos sacros ordines.

Neither is this donation revocable: nay, what has been given in such a manner cannot be reckoned in legitimate division or partition with brothers; yet on the contrary it holds that t. 6. r. 91 and 92. » (And concerning the fourth precedent point, section two, number seventy-eight. See also the discussion in contr. n. 956, where see also regarding other goods to be brought forward for collation with the children.) Whether the father is bound to endow his daughter, against her will, when she is married?

Distingue, affirmavit, si filia sit nupta majoris aetatis iam viginti quinque annos, etiamsi indigno, ut l. 4, d. 26, n. 11, punct. 2, n. 40. cum. Good. But the greater doubt arises if the bride is a minor under twenty-five years? Others affirm absolutely: others, only if she be married to a worthy man: others say that the father should be held bound only to provide alimony if she indeed lacks means; and this is even if she has been married unworthily, as stated in 19 [n. 41] with Molina. And this is more probable.

Hence it is inferred from the aforementioned reference n. 42, that even if the son consumes the marriage contract against the father's will, the father is bound to provide for him if he is in need, and likewise for his wife. It is to be noted incidentally here, by the most recent decree of the Sacred Roman Neapolitan Council, which united four aulas and was sanctioned with the approval of Royal Majesty on 15 December 1742, it having been decreed that parents are not permitted without just cause, either by law proven just or by judge approving, to expel from their home children and sons, or any of them unjustly, and to provide for them outside the house alimentation. And conversely, children and heirs, or any one of them, do not have the power to depart from paternal obedience according to their own will, and to obtain provisions outside the father's house; but it is beneficial for the sons not to be hindered in their will with regard to the parent at that time, so as to procure from him provisions outside the house, since the will of the children is a cause of virtue, not a cause of vice, however otherwise interpreted and perhaps judged. And see the note placed at n. 948.

Edit. To what end are brothers bound? Can parents ever disinherit their children, and for what just cause? (See also on this point n. 948 and 949.) — PARENTS, by the name which also includes ascendants, such as grandfather, great-grandfather, etc., are under a grave obligation of natural law to care for the conservation and education of their descendants. Concerning which, from question 4.

Azor, p. 2. l. 2. q. 47. Fill. tr. 28. c. 2. These cases are resolved: "1.

Parents gravely sin when they expose their offspring without just cause in a hospital or public places. See Bonaventura here; and p. 2, c. 2, and below in treatise 5, c. 4. "A just cause exists, however, if the offspring be illegitimate, as stated by Salamanca on IV precept, point 2, n. 36."

See regarding restitution n. 656.) "The mother is bound (even though venially) to nurse with her own milk, unless she have a just excuse" (If it be that she is weak or noble by custom . . n. 35. cum . . etc.): "Then indeed

she is bound under a grave sin to seek out a good nurse." » If, however, the mother cannot nurse, the father is bound to provide for the cost of nursing, Croix l. 3, p. 4, n. 697. » And when it comes to common matters), "Afterwards, education, up until emancipation, pertains to the father."

Receive it, unless this person were not poor and the mother rich. Fill. . 5. tr. 4. c. 3. n. 4. Regl. 20. n. 32. (4). "3."

A father is bound to provide for his offspring, not only for legitimate ones, but also (in what concerns) spurious ones "where civil law has been corrected according to canon law as stated in c. Cum haberet," to take care of nourishment, that is, food, drink, clothing, and honest arts, according to his state, unless he can otherwise provide for himself, and does not need; moreover also a dowry for the daughter. "However, with regard to children, they say: L. 4, D. 26, n. 21." Boss. de effectu matr. p. 2. c. 4. num. 95. cum Glossa in c. Admonere 33. q. 2. ac Surdo et Me- gala, quod pater tenetur proli alimenta praestare non tantùm filio, sed etiam vacori illius, quamvis eam duxerit sine dote; et contra ipsius patris voluntatem.

Furthermore Azor holds in p. 2, l. 2, c. 4, q. 42, and Merenda Controv. l. 4, c. 34, n. 6, with Baldus and Jason, that the father ought to nourish his son even if the son has previously received an evil portion. Moreover, even clerics can provide this for their own illegitimate children from ecclesiastical revenues. See below, treatise 5, chapter 4, - decree 5, question 4. Hereby they sin 4.

If they do not use diligence, at least let them employ moderate care, so that they may acquire goods with which children are nourished, and have inheritance according to their state. 2. If by dissipating their goods they render themselves destitute, so that they may honestly educate and provide dowries for their children according to their station, Bonac. d. 6. §. 2., ex Azor: if without legitimate cause they refuse a daughter's dowry (or disinherit a son), e.g., because they wish to enter religion, or she has entered it herself, or because he himself has been invited and married, even though she is unworthy. Bon. l. c. ex Azor, Reginald. etc., vel quia filius ordinem sacrum suscepit: sicut enim pater tenetur dotare suas proles pro matrimonio, vel ingressa religionis: ita etiam ad suscipiendos sacros ordines.

Neither is this donation revocable: rather, those thus donated cannot be reckoned in legitimate division or partition with brothers, teaches the contrary opinion in t. 6 r. 91 and 92. (And concerning the fourth precedent point, paragraph 4, section 2, note 78.) See it explained in the

contrary at no. 956 of the Contradictiones. Also see regarding other goods to be brought forward for collation. The question is whether the father is bound to endow his daughter with a dowry against her will when she is married?

Distinguish, affirm, whether a daughter is married at twenty-five years, even if unworthily, according to L. 4, D. 26, n. 11, punct. 2, n. 40. Good. But the greater doubt arises if the bride is a minor under twenty-five years? Others affirm absolutely: others, only if he survive and be worthy: others say that the father is bound to provide sustenance only for aliments, if she herself needs them; and this, even though she has married unworthily, as 19. n. 41. with Mol. Ethoc more probabilius.

Hence it is inferred from the aforementioned reference n. 42., that even if the son consumes his marriage against the father's will, the father is bound to nourish him if he is in need, and likewise for his wife. It is to be noted incidentally here, the most recent decree of the Sacred Roman Neapolitan Council, joined by four faculties, with sanction, to which Royal Majesty gave its approval on 15 December 1742, has declared it holy not to allow parents, without just cause and from proven right or approved by a judge, to expel from their home children and sons, or any of them unjustly, and to provide for them outside the house with food. And conversely with regard to children and heirs, or some one of them, it is not permissible for there to be a faculty of departing from paternal obedience according to their own will, and of obtaining sustenance outside the father's house; but rather that the will of the children not being hindered in their dealings with the parent at that time would benefit them in demanding from him outside the home sustenance, since the will of the children is a cause of virtue, not a cause of vice, unless some other interpretation and perhaps judgment on the matter be made. And see the note appended to n. 948.

Edit. 10 340 What are brothers bound to for this purpose? 341 Can parents ever disinherit their children? And what are the just causes for disinheritance? (See also on this point n. 948 and 949.) 336. — PARENTES, quo nomine etiam ascendentium intelliguntur, v.g., avus, proavus, etc., tenentur gravi obligatione juris naturalis curam et educationem liberorum conservationem. Concerning which, from question 4. Azor, p. 2. l. 2. q. 47.

They are resolved in this way: "1." Parents gravely sin when they expose their offspring without just cause in a hospital or public places. See Bonaventura here; and "p. 2. c. 2. et infra tract. 5. c. 4."

"A just cause exists if the offspring be illegitimate, as stated by Salamanca in IV of the precepts, point 2, number 36." See on restitution n. 656: "The mother is bound (though under a venial sin) to nurse with her own milk, unless she have a just excuse" (If indeed it be that she is weak or noble by custom, etc., n. 35 cum., etc.). "Then indeed she is bound under a grave sin to seek out a good wet-nurse." Bon. d. 6, q. 4, p. 6: "But if the mother cannot nurse, the father is bound to provide for the cost of nursing, Croix l. 3, p. 4, n. 697." And with the common: "Afterwards education, up to the point of emancipation, pertains to the father."

Receive it, unless this person were not poor, and the mother rich. Fill. . 5. tr. 4. c. 3. n. 4. Regl. 20. n. 32. (1) « 3.

A father is bound to provide for his offspring, not only for legitimate ones, but also for illegitimate (in whom civil law has been corrected according to c. Cùm haberet), to care for their sustenance, that is, food; drink, clothing, and the necessary arts, according to his own state, unless he can otherwise provide for himself and does not need it; and furthermore, a dowry for his daughter. "However, with regard to children, it is said: 'Book 4, Decretals, Day 26, Number 21." Boss. de effectu matr. p. 2. c. 4. num. 95. cum Glossa in c. Admonere 33. q. 2. ac Surdo et Me-gala, quod pater tenetur proli alimenta praestare non tantum filio, sed etiam uxori illius, quamvis eam ducerit sine dote; et contra ipsius patris voluntatem.

Furthermore, Azor holds in book 2, chapter 4, question 42, and Merenda in controversy 4, chapter 34, number 6, with Baldus and Jason, that a father ought to nourish his son even if the son has previously corrupted a portion already given to him viciously. "And indeed, clerics can also provide this for their own illegitimate children from ecclesiastical revenues." See below translation 5, chapter 4, decision 5, question 1. Here they sin.

If they do not employ diligence, at least let them use moderate care, so that they may acquire goods with which children are nurtured, and have inheritance according to their state. If by dissipating their goods they render themselves destitute, so that children may be honestly educated and married according to their station, Bonac. d. 6. §. 2., ex Azor: if without legitimate cause they refuse a dowry to their daughter (or disinherit a son), for example, because they wish her to enter, or she has entered, religion, or because, having been invited by themselves, she has married, although she is unworthy. Bon. l. c. ex Azor, Reginald. etc., vel quia filius ordinem sacrum suscepit: sicut enim pater tenetur dotare suas proles pro matrimonio, vel ingressa religionis: ita etiam ad suscipiendos sacros ordines.

Neither is this donation revocable: rather, those thus donated cannot be reckoned in legitimate division or partition with brothers, teaches the contrary opinion in t. 6 r. 91 and 92. (And concerning the fourth precedent point, paragraph 4, section 2, note 78.) See the discussion in contr. n. 956, where also see regarding other goods to be brought in collation for children. The question is whether the father is bound to endow his daughter with a dowry against her will upon her marriage?

Distingue, affirmas, si filia sit nupta majoris aetatis iam viginti quinque annis, etiamsi indigno, ut l. 4, d. 26, n. 11, punct. 2, n. 40 cum. Good. But the greater doubt arises if the bride is under twenty-five years of age? Others affirm absolutely: some, only if she has married worthily; others say that the father should be held bound to provide alimony only if she is in need, and this even if she has married unworthily, as stated in 19. n. 41 with Mol. And this is more probable.

Hence it is inferred from the aforementioned reference n. 42, that even if the son consumes the marriage contract against the father's will, the father is bound to provide for him if he is in need, and likewise for his wife. It is to be noted incidentally here, by the most recent decree of the Sacred Roman Neapolitan Council, which was joined with four faculties and sanctioned, to which Royal Majesty gave its approval on 15 December 1742, it having been decreed that parents should not, without just cause and by reason approved by law or by a judge, expel from their home children and sons, or any of them unjustly, and to provide for them outside the house. And conversely, children and heirs, or any one of them, do not have the capacity to depart from paternal obedience according to their own will, and to obtain sustenance outside the father's house; but it is beneficial for the sons not to be hindered in their will with regard to the parent at that time, so as to procure from him outside the home sustenance, since the will of the children is a cause of virtue, not a cause of vice, however otherwise interpreted and perhaps judged. And see the note to n. 948.

The authority of ten cataracts having been abrogated, from henceforth this has been definitively established as to be inviolably observed by law perpetually. 339. — « 4. The parent is bound to provide for the offspring, even after renouncing religious duties, in the same cases in which the offspring would be bound to provide for the parent; see the aforementioned doubt in case 4 and at the end of case 5, note 335. Parents are under a grave obligation to instruct their children themselves, or by others, in necessities pertaining to salvation.

Hence they grievously sin: 1. If, when within themselves, they do not take care that their children be imbued with good morals, learn the Christian doctrine or the rudiments of faith, consort with the wicked, observe the commandments of God and the Church, frequent the sacraments, abstain from sins, Azor, c. 2. If they do not turn away occasions of sinning from them, or permit them to reside in suspicious places or houses: d. 3. n. 4. 3.

If by counsel or evil example they have been corrupted. If they do not reproach and punish the dissolute, yet let them do so moderately: for they do not sin even by excessive beating, e.g. that they may be notably injured.

Sot. 3. de contr. Question ultimate, part three, number six. It is also held that it is proper to resign one's freedom concerning the choice of status.

Whereby they sin in coercing unwilling ones to marriage, or to religion, either by compelling them, or by abstracting from them. » See d. n. 335. v. Moreover, see p. 6, n. 850, at the end, v.

He says: "And indeed concerning those who are excommunicated, he commands that daughters be sent to a monastery." 340. — "7. Even though a brother is bound by law, both of charity and piety, at least in extreme or quasi-extreme necessity to come to the aid of his brother or sister; yet this obligation is not the same as that which exists between parents and children, since there is no such dependency. See 2. c. 31. n. 34.

Wherefore, if one has professed himself in religion, he is not bound to leave it in order to assist them. However, it must be noted that anyone is to be held accountable in both forums, if possible, to provide sustenance and dowers for the brothers or sisters, whether for their last extremities or also for grave necessity. Thus 24. de IV. præc. punct. 4. §. 1. num. 69. cum Azor, the doctrine henceforth handed down to brothers begotten from the same father though from different mothers; for these being joined on both sides are reputed in law as sprung from one and the same stock; when more than one guardian. §. Cum tutor. ff.

On the administration of tutors. If, however, brothers, as if sisters, are merely uterine in respect to the mother, then there is an obligation to maintain them, but not to give sisters a dowry. 341. — "Do you inquire whether a son can sometimes be deprived of his hereditary right by the father?" "Resp." It can be for a just cause, otherwise not: the same must be expressed in the will.

Such a census shall be made I. ingratitude (nisi in gratiam patris redierit, ipsumque poenitentiae initium sit). Caput 2. Doubt 3.

» If he has guarded himself before the testament was established, so that, if he has injured his father gravely, or has plotted against his life, or has struck him with his hand, or has involved himself in maleficia. If a stepmother or father's wife has carnally known him; if he has refused to assist a parent who is furious or imprisoned, as surety; if he has hindered his father from making a testament; if he has squandered the goods of parents with great expense of their own. III.

If a daughter, being under twenty-five years of age, should choose a luxurious life, etc., regarding such matters note that valid causes apply when the son has other means whereby he can live; for it cannot be deprived of necessary sustenance for life according to the law of nature; which cannot be taken away by civil law. Qu. 1, p. 6, §. 3. » from . Az.

Reg. Fill. . Fourth book. First question. Third article. Number forty-six. and t. 2. lib. 7. and cap. 17.

» (As regards necessities for a state. Maintained in the same place, point 2, number 43, with the common. Regarding the alienation of children, see on contracts nos. 948 and 949.) (1) ## DOUBT III. ## To what are guardians, curators, who stand in place of parents, bound?

THE TUTOR (and the CURATOR are the same in this regard) is bound to manage the care of the ward, and to administer his goods rightly and faithfully. The reason is: because to this end he is constituted and assigned as guardian for the ward; in place of the father. Wherefore, si delin-quat, vel notabiliter sit negligens hanc in re, peccat graviter, et ad compensationem damni, quod pupillus ex eo accepit, obligatur (et 'saltern de dolo, et culpa lata): imò, si tutoris officium exerceat pretio (quod tamen si ab initio non est constitutum, censetur susceptisse gratis), tenetur etiam de levi culpa. 3. quæst.

Whereupon you resolve: 1. 4. (2) ## The tutor is bound to guard the person of the ward so long as it is necessary, and to imbue him with good manners and to educate him well either by himself or through others. 2. 2. The tutor is bound to faithfully administer the goods of the ward; hence (undertaking the office of the tutor), he must compile an inventory; otherwise, any damages that arise from his deficiency shall be restored by him; nor is it permissible for him to allow the ward to have excessive sums

of money for unnecessary purposes.

The tutor (both as a user and a curator) is bound to conserve all the rights, goods, and actions of the ward (or minor), and to sell any other perishable goods and convert the money into the purchase of stable goods, or into rent, etc., as may have been more advantageous. Ibidem ex libro 22. quaestio 17. « 4. If the tutor or curator converts the money of the ward to his own uses, he is bound to restore the whole loss incurred, or the damage arising, which the ward or minor has suffered thereby. loc. cit. 5.

He is likewise bound to restore the fruits (deducting expenses) which he could have received from the goods of the ward, and through his own fault did not receive. Sylv. v. » « 6.

It is bound to demand the names of debtors and to settle the debts of wards; thus, however, that it may consult as much as possible what is good for the ward. Sylv. Reb.

folio column table ibid. 7. Tutor vel curator non potest donationes vel remissiones gratiosas facere de bonis pupilli, quia non ad destruendum sed ad tuitionem est constitutus, ibid. Receive a remunerative donation: thus, for instance, something may be added by way of a stipend from a liberal donation, Mol.

Lugo dated 23rd day, section 40., book 7., chapter 47., decree 8. See t. 6. r. 17. « 8. Finally, it is held (after the completion of the office) to render accounts, because this burden is common to those who administer other people's goods.

See Bonac. de contr. d. 3. Question 49. p. 4, and below in this book, n. 917 et seq. Doubt IV: What obligation do masters, servants, superiors, and inferiors have towards their vicar? And what must superiors provide to the subordinates? From what principle are they bound to choose more worthy ones for offices? What are bondsmen bound to render to their masters? Are bondsmen who do not hinder thefts from the master's goods bound to restitution? When a bondsman is led away for a year, may he ask for wages on departing? Is an agricultural servant bound to supply the place of a freed bondservant? After three years have passed, may he demand his wages? When serving without any stipulated wage, may he demand wages? May bondsmen flee to their own people when in danger of death? Resp. 4. The lords and superiors are bound to take care of the servants and other dependents.

It is evident from 4. ad y. 8. If any of their own, etc. Et la ratio est, quia sunt ipsorum caput, et vices parentum gerunt; ideòque tenentur quodammodo ad eadem, ad quae parentes. Above all, however, they are bound to take care, so far as is in them, that they observe the precepts of God and of the Church.

Good doubt. Question 46. Article 4. » part. 8. Here incidentally inquire: whether secular princes are bound to elect more worthy persons for secular offices?

They affirm, according to precept, point 6, section 2, number 103: namely, when offices are not distributed to unworthy persons; because, as they say, these offices do not pertain to distributive justice, nor are they common goods, but rather the king's, who satisfies if he rules the republic with dignity, but not with supreme dignity. Both opinions are plausible, but the first opinion is more probable, because otherwise the republic would suffer serious harm; for which reason, having allowed opposition in Motivum Lugo d. 34., no. 19., it finally concludes, no. 21., that princes should regularly be held to elect those who are more worthy, excepting one or two ministers. Whether kings can sell secular offices?

They deny Adrian. Ought. Tower and L. C. N. 94. ex 1.

This law refers to the laws concerning it. They affirm, however, that according to D. ap. ex n. 95., a sale is absolutely necessary for the utility of the realm, and now it is sold at moderate prices, as well as to worthy people, and so far as possible, to more dignified ones. Moreover all understand it of the greater offices of magistracies, by which justice is given to be ministered; but not of the lesser ones, by which only justice is executed.

See c. 4. The lords sin grievously: 4. If they hinder the ministers from hearing mass on feast days without just cause; or if they impose servile works on them on feast days; or if they command things to be done which cannot be accomplished without sin: etc., 2.

If they permit occasions of sinning when they can prevent them; or if they gravely transgress and do not correct those who do so, or if they are negligent and do not admonish what is necessary for salvation, nor correct them, they shall not be corrected. Bon. l. c. (Communiter cum prae punctu 7. § 4. n. 140.) « 2. They likewise sin grievously: I.

If they afflict these severely with grave injuries, they call them demons,

dogs, etc. Bon. l. c. et 4. c. 4. d. 6. licèt t. 7. r. 47. excuset à peccato talem contumeliam quod ex ira et indeliberatione soleat proferri. "Moreover, generally speaking, they are not considered as grave injuries."

If convenient alimentation does not provide, they who have faithfully served (provided that they do not receive a just reward) will not be discharged, or defer discharge without a reasonable cause. Ib. III.

If before the expired term they rashly expel them from the house: in which case (unless out of a gravest cause they have done this) they are bound to the payment of full compensation. (That is, Article 24, paragraph 7, section 4, note 154: even if provided with a servant, he is not bound to return to complete the time; understand this, if the term of the agreement has already elapsed and through it he did not fail to fulfill; for then the master is bound to pay the promised salary. But it is doubtful whether, if the servant had suffered no damage on account of the cause of expulsion, the whole salary should be owed to him?

In hoc probabiliter opinari possumus, juxta dicenda infra n. 345, quod homo tenetur in conscientia solvere poenam injustitiae et saltem majorem quam dimidiam partem salarii, imò ut notat 2. c. 24. num. 8., teneretur ex lege. Who works, cap. 38. and tit. 46. ff. Lo- cati, totam mercedem tribuere; sed hoc dicimus, non nisi post sententiam, juxta regulam omnium penalium.) « q. » 1. t. 3. c. 9. q. 33.

IV. If they do not expel from the house him who corrupts free persons or other domestics by words, example, or manners that are perverted, and who is not amended by reproof. Azor, 61. n. 2. " 3.

A heres non est tenendum dare salarium famulo infirmo (quandiu aegrotat), nisi in extremis vel gravi necessitate (tunc enim debet ex charitate); imo sumptus impensaeque ad ejus curam potest repetere. Mol. l. 4. t. 28. c. 4. n. 8. e. 9. ». n. 149. with Mol.

Azor, see what is to be said in this book, n. 864., p. 343. — « Resp. 2: servants and other subjects are bound to render their lords what children owe to parents, namely love, reverence, and obedience; » and similarly towards superiors in some manner the same as children towards parents. The reason is evident from the aforementioned statements, because they are to them as a substitute for parents. S. Th. 2. 2. q. 103.

Regin. l. Wherefore the solution is: "1." Sinful servants severely offend: I.

If they do not labor or serve faithfully, they are bound to compensate for the damage. Mol. . 4. c. 24. II.

If they cause or permit serious damage when they are able to prevent it. Fill. tr. 28. c. 3. q. 10. Regin. l. c. » (Cum Mol. tr. 24. c. unic. punct. 7. §. 3. n. 438. ac communi.) « Et quidem, si illud damnum inferatur sive a con-famillis, sive ab extraneis, in rebus quarum cura ipsi commissa est, a restitutione non possunt excusari.

Mol. . 2. c. 23. p. 30. n. » 65. Filius tractatus tertii sexagesimi capitis noveni quaestionis noveni numerali centundecimquarti. III.

If they depart from the Lord without a very grave reason before the time elapsed; but beyond this, to remain is not required, even if through illness they are prevented for some time from serving. Molin. l. c. Escob. e. 7. n. 50. IV.

If the Lord in matters of great importance do not obey. Bon. l. c. 344. — Whether servants who do not hinder thefts from their master's property are bound to make restitution? Others universally affirming, as Renzi in IV. part. cap. 1. Question 21. and de VII. part. sect. 3. Question 25. with Pontius et alii.

Others, however, as Lessius l. 2. c. 43. n. 75. Lugo de justit. d. 19. [praem.] cit. n. 438. cum Mol. Azor, etc., more commonly and probably, distinguish and say that if damage is done by domestics, and the thing entrusted is not specially committed to the care of servants (as to be held entirely with Buscema and common opinion), then the servants are not bound to restitution; for then they offend only against charity, not against justice, because domestics are not obligated by reason of justice to guard the master's things.

However, otherwise, if damage is caused by outsiders, as stated in common law, and 8th tractatus, 4th chapter, section 3, who adds that in such a case each servant is bound to make restitution in full; for each of them was obligated to prevent the entire damage with his power; and if he could not alone prevent the damage, he was at least obliged to call upon other fellow servants to hinder the theft. 345. — Question 2: Whether a servant, who has devoted his services for a year, can claim payment for the time during which he served before he left culpably before the end of the year? The more common opinion affirms this, against Molina (unless a grave damage be incurred to the lord); because service rendered deserves its wage, although not the whole wage agreed upon; hence the lord is

bound to pay at least somewhat less than half the stipend. Thus it is written in lib. 2, cap. 3, quaest. 6.

Full. trans. 28. p. 2. c. 3. n. 68. Syll. v. et pree. punct. 7. §. 3. n. 432. 346. — Question 3. si famulus locans operam suam ad annum, per menses ægrotet, teneatur operam suam supplere? No, from the common law with number 433. together with number 342. at the end, v.

Herus. 347. — Question 4. an famulus, elapso triennio, postquam discessit a domino, salarium petere possit et occulte sibi compensare? They affirm [this] in lib. 7, d. 37, n. 47 et n. 151 cum Mol. Page; because, although in the external forum a servant loses the right to petition for wages after the expiration of the three-year period, as they say Cov.

Medium and Lamas ibidem (contrary to Mol.) according to the Spanish law, or bull 33. S. Pii V. dicit quod post biennium a servitio præstito admittitur famulo actio petendi salarium; sive juxta sanctionem S. R. concilii Neapolitan, junctis quatuor aulis, relatam inf. n. 546., quod, elapsis duobus mensibus, postquam famulus à domino discesserit, negatur ei facultas mercedem in judicio petendi: attamen in foro conscientiae famulus jus ad salarium semper retinet; et dominus, si certus sit se non solvisse, semper ad solutionem tenèri videtur; tanto magis quòd in dicta decisione (pro nostro regno emanatà) dicitur, actionem denegandam esse famulo, non præscriptionis ope, sed vi præsumptae solutionis. This however is to be understood, if it morally be established that the master has not legitimately prescribed; for if otherwise the master had prescribed a solution for three years with title and good faith, in that case neither would the master be bound to solve, nor could the servant compensate himself with salary, even if he were certain of the non-performance of the solution; because then the master would have acquired the right not to solve by virtue of prescription according to what is said below n. 517. 348. — Question 5.

An famulus, nullâ statutâ mercede inserviens, possit justum stipendium (saltem infimum) petere, vel occultè surripere? Distingue; si dominus hujuscemodi famulorum operam conducere solet, affirmas. Accordingly, if not: how does it happen with boys whom noble bishops are requested to admit into their household; for then it suffices that the lords provide them with food, clothing, and lodging, since such is the custom.

Thus in the twenty-fourth point, seventh section, third chapter, note number one hundred thirty-five with Mol. Azor, ..., n. 436. with Azor, Mol. Reb.

Fag. Unless otherwise it is in use regarding some art; for from the nobility of the art sometimes something is required from the disciple by the master, as in the art of horological construction. However, from the nobility of an art, sometimes something is required to be given by the master to the disciple, as in the art of horologe construction; but from the ignobility of an art, the disciple often ought to receive something from the master, such as the art of a smith. Therefore, it must be considered according to the judgment of the prudent, what is observed in usage in each art. 349. — « 2.

Servants do not sin if, the master refusing just sustenance or wages, they make use of hidden compensation, Mol. l. cit. However, nevertheless another mode is not to be condemned; nor more to be received than is due: nor any serious scandal or other grievous inconvenience feared. See 2. q. ult.

Page 2, number 46. However, in this matter observe proposition 37 among the condemned by Inn. XI.

See no. 522.) « 3. Similarly concerning obsequies for which there was no obligation, if you have rendered them (indeed, if those things were not done out of gratitude and liberally, but rather with an intent of merit), it is permissible to receive compensation from the goods of the Lord, which otherwise could not be obtained, teaches n. 408. c. Many more on this subject see infra tr. 5. c. 4 d. 4. et c. 3. d. 40. et Bon. d. 6. q. 4. p. 8. Unless they themselves had spontaneously offered their services. But whether servants can compensate themselves for a greater service rendered?

See n. 522. 350. — It is noteworthy here incidentally this question, which is useful in practice: whether servants captured justly in war may licitly flee to their own? They deny Mol. Sylv. ibid., § 4, n. 145: quia tales servi censentur tamquam perpetuo ad servitutem damnati, cum dominus justè eos possideat.

However, the contrary is more commonly and more probable held. Sot. Lugduni . n. 446.

Reason, because such a law of nations for making captives in just war into slaves was thus accepted, that their liberty was left to be fled by them. And it is evident from the Institutes, lib. 2, tit. 4, de rerum divis., where n. 47 speaks about these matters: Nevertheless, those who have escaped our power and returned to their own people regain their former state. V.

DOUBT.

To what are husband and wife mutually bound by this precept? 351. To what is a wife bound toward her husband by this precept? 352. Is a noble wife bound to perform base services? 353.

Does a contract exist to prevent the wife from changing her domicile? But is the wife bound to follow her husband who has been sent into exile? 354. Whether after the death of a husband, is the wife bound to dissolve debts contracted for the maintenance of the family? 355.

What is bound upon the wife to restore to the children of the first marriage? 356. How shall a man sin against his wife? 351. — R. Resp. The wife is bound to obey her husband in those matters which pertain to the governance of the household and the cultivation of good morals; but he should treat her not as a servant, but as a partner.

Reason, quia maritus est caput, et uxor membra. n. 20. . 9. q. 6. n. 144. et comm. Whereupon I resolve: • 1. Conjuges peccant: 1.

If they do not contract matrimony with due intention. 2. If without dispensation they omit the declarations. 3. If they receive the sacrament of matrimony in a state of mortal sin. 4.

If they use marriage against nature, or in an improper manner, or with danger of abortion. 5. If they deny what is due without just cause. If they have been touched with danger of pollution, let the shameless ones be guilty. • 2.

The wife commits a grave sin: 4. If through disputes she provokes her husband to grave anger, or by words to blasphemy. Fill. l. c. n. 145. et Bon. 2.

If she shall spend something notable against the will of the husband, and similar to the status of unmarried women, unless indeed from paraphernal property, if she has it. 3. If, in contempt of the husband, she vindicates authority over herself. If she does not wish to follow her husband when he changes his domicile, provided that she can do so without danger to life and salvation, and provided that this be contrary to no agreement, and further that the husband not have become a vagabond after marriage.

See below, titulus 5, caput 1, dubium • 4. 5. If it judges wrongly about the continence of the husband without sufficient evidence. 6. • If it denies a

debt without just cause. See below in lib. 6. 7.

If he manages the household administration without just cause, what is the case if the husband dissipates the goods of the family without reason and grace? Sylvius, d. 4. n. 18. (Or if he be remiss, or less fit for the governance of the household. conf. 24. cum Fill.) Gob. et Hanno.) 352. — Quærunt: An uxor nobilis teneatur præstare viro præcipienti officia vilia, v. gr. cibos condire, verrere domum, etc.? Affirmant de matrim. l. 6. d. 6. n. 14. . praec. punct. 3. §. 2. n. 59. cum Sylv.

Gar. 353. — A more probable pact is that of not changing the domicile without the consent of the wife, as stated in l. 4. d. 40. n. 2. cum Lop. But this is to be understood, unless a new and grave cause supervenes. . n. 64. cum . Fab. et al. Question 2. Whether a woman is bound to follow her husband who has been sent into exile?

Henry and Bartol deny this according to n. 62, because an innocent wife is not bound to suffer the penalty. But more probabily affirm . and . 4. d. 41. n. 14. with others; because the wife is bound to suffer not the penalty but the misfortune of the husband. And they say the same thing if the husband is excommunicated in some place.

They also say in turn with them. DD. quod si mulier necessitate coacta mutet domicilium, vir comitare eam debet (4). 354. — Question 3. an uxor mortua viro teneatur ex bonis dotalibus solvere debita contracta ad alendam familiam? The first opinion affirms that if the husband was poor when he contracted debts; whereas the second opinion says that if he was wealthy; because a poor man was not bound to support his wife; therefore she is herself bound to solve it, which has been turned into her own utility.

Thus L. 9. D. 4. n. 28. The second, however, more probable opinion denies that he is bound to do so whether he was poor or rich; for the reason that the action of creditors seeking repayment of a loan is personal, namely only against the man; and although there existed a reason of poverty suspending the obligation to provide for his wife, this obligation had not been extinguished: hence, if by the loan he provided for her, he fulfilled his debt. Thus, n. 64. with Mol., or if the husband had protested himself unwilling, standing by his own poverty, to provide for her gratuitously.

And what has been said here concerning the aliment of the wife is also said concerning the aliment of the children; as 355. — Ques. 4. Whether the wife passing over to secondary nuptials should reserve to her children from the first marriage whatever she received from the first husband,

retaining only the usufruct? affirming from l. From the will, and law. In donat. c. de sec. nupt. si accepit titulo lucrativo; secùs tamen, si oneroso, vel si acceperit ab extraneo.

(In donations concerning secondary marriages, if she has received with a profitable title; otherwise, if burdensome, or if she has received from a stranger.) And the same is said with regard to the husband concerning things given in dowry by the first wife. . 6. d. 41. . 23. punct. 3. §. 2. n. 66. cum aliis. 356. — « 3.

The husband commits a grave sin: 4. If the husband afflicts his wife with contemptuous words, or with infamous words. "(And such a sin would be of double malice, as stated in §4, n. 46.)"

If he impedes her concerning the precepts of God or the Church without just cause. Syr. l. 7. c. 7. If however he impedies even without cause regarding those goods which are proper to counsel alone, such as confession, communion, etc., it commonly constitutes a venial sin; unless it be determined that those derive great utility from them.

Sayr. p. 7. Si caedat graviter: tamen moderatè castigare verbis, vel etiam ex gravi causa verberibus moderatis, habita ratione conditionis et statûs, quandoque potest. He consents to this Elb. Conf. 21. n. 58. cum Gob.) « 4.

If he nourishes and she does not, except nevertheless that the wife has withdrawn from conjugal communion through her own fault. » (Or unless adultery has been committed, as stated in lib. 10, de dom. cap. 8, n. 25; and in cap. 3, pars 6, §. 5, and Croix, lib. 3, pars 1, n. 744. It is unjust for a man to retain his wife's dowry if he divorces her before a proper authority pronounces judgment: although he may oppose an exception of adultery to the woman who seeks back her dowry, and petition that it be applied to him, as Croix says in n. 746, with Abbate and . « 5.

If he neglects the governance of the house and the household affairs. 6. If he does not live with his wife, or if he remains absent from her for a long time without just cause. 7. If he is able, he does not provide nourishment.

See and No. 49. Note 4. Chapter 2. Article 40. On Marriage, Disputation 48. Note 48. DOUBT VI. What obligation do parish priests have towards their people? 357.

To what are the parish priests bound concerning residence? 358 To what are they bound regarding the administration of sacraments, especially

during the time of pestilence? 360 Are they bound to celebrate [mass] for the people? 360 Are they bound to preach and instruct the people, etc.? In what way are parish priests bound to correct their subjects? Dub. I.

An ad hoc tenendum sunt ex charitate, vel ex justitia? Doubt. II.

Is it incumbent to inquire into the manners of the subjects? Doubt. III.

Are they bound not to abandon the sheep, even when there is danger of death? 357. — “Resp.” The curate, or parish priest, is bound by divine right: 4. To remain in his parish. c. 4. de Ref. . paroch. c. 8. n. 4. Aliter, in conscientia fructus non facit suos, teneturque pro rata absentiae restituere fabricae Ecclesiæ vel causæ piæ.

Tamen potest ex justa causa et licentia Episcopi ad breve tempus abesse. See Azor, t. 2. l. 2. c. 4. Possidius. . lib. 4. cap. 4. quaest. 8.

Regarding residence, see what should be said about benefices, lib. 5, n. 121 and 123. — « 2. It is held to administer the sacraments » (Not only in extreme necessity, but also in grave necessity, according to Charit. c. 6, punct. 3, § 4, n. 33, with St. Thomas and the common opinion. And thereupon Bonaventure adds: to inquire gravely about the parochial church and even those severely indigent) « How often, and with what danger, see below and d. 2. q. 3. p. 2.

» Possessions . cc. » (As regards the sacrament of penance; as stated by Busembi, in his work on penance, book 6, n. 623, resp. 2 and 3. Regarding the Eucharist, one is bound to minister it whenever rational sheep reasonably request it. See Busembi: de sexto inquirendo, caput 283 et 254.

It is probable that during a time of pestilence, one is not bound to minister the Eucharist: because of the danger to life. See on the Eucharist, ibid., I, 6, n. 233. 359. 3. Orate pro populo, et celebrate, ut populus audiat Missam: quam etiam tenere eum eidem applicare diebus saltem festis, et aliquot aliis docet . 3. c. 5.

But they deny that it has been safeguarded by any law, article p. q. 83, art. 1. See Boni. qui: ult. . c. Note here, what from the SS. It was established by Pope Benedict XIV. in his letter Benedicta, published in the year 1744, that whoever, whether residing within the parishes or not, is entitled to congruous revenues, is bound to apply Masses for the people on all Sundays and feast days.

And although this may be granted to a particular parish priest, if he cannot otherwise live, that he apply the mass for the detention synod providing in festive days, it is nevertheless necessary, that they themselves should supply masses for the people on other weekdays. And what is more, a faculty has been granted to Bishops to assign vacant churches a suitable portion of fruits, so that they too may celebrate Mass for the people on days [of obligation]. See book 6. note 323. 360. 4.

To teach the people by preaching, arguing, etc., either directly or through others. . 5. c. 5. Possessed. Barbos. . cc. "(See what is said regarding the third precept, no. 269."

Here incidentally. Similarly, superiors of religions are also held to be obliged to possess subjects as their pastors, 21. n. 583. with Hanno.) 5. It is held that on each day of the Lord and solemn feasts the Christian doctrine should be explained to the people either by himself or through another, as is evident from c. 4 de Ref. This is under a grave obligation, even of divine law, because of the greatest necessity, by which they are taught by the bishops and others of the diocese to accommodate themselves (and also others, so that they may hear it, learn it, and know it). . 4 c. 1 d. 4 n. 7 et 8 l. 4 d. 48.

Semoh. Pad. (But he may have another person satisfy this obligation of expounding Christian doctrine by subtlety. . 21. c. 2. punct. 5. n. 55.) 6. It is bound to visit the sick, to take care of the poor, to correct sins, etc., concerning which Poss.

Reg. tom. 2. l. 20. c. 5. sect. 3. . see above. Parochi (et tanto magis Episcopi) tenentur sub gravi corrigere oves, in peccato mortali vel ejus proximo periculo existentes, etiam cum discrimine vitae, et non solum in extrema, sed etiam in earum gravissima decessitate semper ac adsit spes emendationis. Thus commonly Bon. 4. 3. q. 4. p. 4. n. 5. with Val.

Mald. and art. 6. n. 12. Mazzott. tom. 4. p. 458. . 21. c. 6. punct. 3. §. 1. n. 33. cum Vide etiam dicta 1. 3. n. 40. Furthermore, parish priests are bound to remove scandals whenever any inconvenience arises (4); hence, if any of the subjects is incorrigible and serves as an occasion of ruin to others through his own wicked example, the parish priest is obliged to remedy such damage, at least by informing the Bishop; not only once, but until the scandal persists and hope fails, so that it may be prevented from occurring.

But there is doubt I. Whether pastors are to be held to this by charity or by justice? They hold that they are to be held only by charity. But they are

held more probably to be bound by justice, as they perceive.

IV. q. 1. tit. n. 192. 6. d. 3. p. 7. n. 8. cum l. c. cum . Doubt is cast upon it. Whether pastors are bound to inquire into the manners of the subjects?

The response is given affirmatively according to common opinion, as it is taught in question 33, article 2, ad 4. Caj. Soto, etc. The reason, as St. Thomas explains it, is that those who have a special obligation to care for the salvation of some particular person, just as pastors do for each of their sheep, are bound not only to correct the offenders but also to see to it that they fulfill their own obligation.

But concerning others who have a general obligation towards their neighbors, it is sufficient for these merely to correct those whom they have observed to be fallen or in immediate danger of falling. Doubt is considered III. Whether bishops and parish priests are bound not to desert the flock, even when there is danger of death?

It is responded as follows: According to article 5 of question 185, book two: Where the safety of the flock necessitates the presence of the shepherd, the pastor ought not personally to desert his flock, neither for some temporal advantage nor even for a personal imminent danger, since a good shepherd is bound to lay down his own life for his sheep. Thus it is held, and these words contain both counsel and a precept, as rightly approved by 21 c. 2. punct. 6. n. 76. ex c. Sciscitariis 7. q. 1., where this is clearly expressed. If however (as St. Thomas says) the salvation of the subjects can sufficiently be provided for in the absence of the Pastor by another, then it is permissible for the Pastor to desert his flock corporally either for some temporal advantage of the Church, or for personal imminent danger.

What, however, are the causes excusing parish priests from residence, see book 5, number 125. Furthermore, it must be noted that 1., when the Bishop received the governance of his episcopate, he should (as the council chapter 16 on Ref. prescribes) demand from the capitular vicar an account of all matters conducted by him during the time of vacancy. Notandum 2. teneri Episcopum ex eodem c. 3. de Ref. simul ac potest suam diæcesim visitare? et eum in visitatione nihil posse accipere, nisi victualia.

Thus it is said there: Bishops themselves should visit their own diocese, or if they are legitimately hindered, through their general vicar or visitor; so that if they cannot visit the whole every year because of its extent, at least

they visit a greater part thereof; nevertheless, in such a way that the entire biennium is visited by themselves or their visitors without omitting anything. Then is added: Let them hasten to resolve the visitation with due diligence. Meanwhile let them beware lest they themselves or anyone on their behalf receive money or any gift whatsoever, howsoever it may be offered, for the purpose of visiting; this prohibition holds even despite any custom however ancient; excepting only provisions which shall be frugally and moderately supplied to them and theirs solely out of temporal necessity and not otherwise.

Let it be in the option of those who visit, if they prefer to solve that which was previously due from themselves by a certain taxed pecuniary amount according to custom: provided that the right of ancient conventions with monasteries and other pious places or non-parochial churches remains unhurt.... But if anyone, may it not be so, shall presume to receive anything more in addition... he shall besides make double restitution within one month, and also be mulcted. ## DUBIUM VII. ## What is the obligation of preceptors and disciples? 361. — « Risp. There is a certain similarity in the obligation between preceptors (and likewise between pedagogues) and disciples, as there is between parents and children. ## Whereupon resolved: • 1. Discipuli peccant: 1.

If they do not show reverence and honor to the preceptors and pedagogues, 2. If they do not obey in matters pertaining to ## Chapter 2. Doubt 7.

to you concerning studies and good morals. 3. If they reproach them with vices or contemptuous words. 4. If they study negligently, they may waste the time set aside for studies or for play, and for idleness.

They will dissipate the funds of their parents, or expend them uselessly. Let evil be their end in studying. 7. The laws of their gymnasium, » or statutes of the academy (if indeed they oblige to sin) will not be observed. 8.

Let them study superstitious sciences, or forbidden books, and read banned volumes. The stipend due to the teacher they shall not pay, when they are able to do so. See and 25.

Fill. tr. 28. part. 2. c. 40. Question 4, Article 362, Point 2. Masters and educators commit sins: 4.

If they conceal and do not correct the faults of the disciples when they are

able to do so. Let not the progress in letters of those whom they ought to correct and not conceal their faults when they can, be diligently promoted by them. 3. If they do not teach them good morals. 4.

If by intention they falsely code as true, or as superstitious and harmful to salvation. 5. Let them not themselves be negligent, that they may satisfy their office. 6. If they demand a greater stipend than is just, or than what the gymnasium laws allow, or custom permits. 7.

They should not bestow doctorates upon the worthy and the unworthy alike, which is especially true in theology according to the canonical, civil law, and medicine; for Cajetan holds that in philosophy it would be reckoned at most only venial. Doctor. 8. If disciples are to be bad examples.

If those imbued with evil customs, and who are pernicious to others, are admitted to the schools, or not expelled from them, see [the relevant text] 4, c. 4. > d. 14. ON THE FIFTH AND SIXTH COMMANDMENTS.

HEAD I. What is prohibited by the fifth precept: Didst thou not fall? 363. What are those loaves that flow from murder made by murderers? 364.

Do they incur the same penalty for murder themselves? 365. Concerning the agitations of bulls. 363. — IT IS PROHIBITED. The killing, maiming, beating, and other similar injustices inflicted upon a human; concerning which inquiry is made, and when such would be unjust? It must be noted incidentally from the chapter: Concerning the killing of a human being, on homicide, in 6, that those who command a Christian to be killed by assassins, or who receive, defend, or conceal them, ipso facto incur excommunication and deposition from every dignity, office, and benefice.

Furthermore, according to Decretum Capitula Pro humani, they are regarded as excommunicated; so that they are deprived of all their goods, and the power is given to anyone to kill them. This however must be understood after the declaratory sentence, to which indeed such arguments as these suffice merely. Thus it is understood at the end of d. c., where it is said: And after having been established by arguments probable enough, that some have committed a crime so abominable, no other judgment against him shall be required.

Understand that no other sentencing judgment is required. Thus Molina, Bann. de V. praec. 1. punct. 8. n. 490. Here it must be noted further that these individuals, after the declaratory sentence, as stated above, ipso

facto incur excommunication, and are deprived of both dignities and benefices which are vacant by law, as Asoe states, and in the same place n. 494.

2. It must be noted that the censure mentioned above is incurred solely by virtue of the aforementioned mandate, as stated in the decree: Although death may perhaps not follow from this mandate. And thus Mol. d. n. 491. 364. — Yet still there is doubt whether the aforementioned penalties also incur for assassination, since the text merely imposes them on those who are commanded? The first opinion affirms this, because those who are nearest to the act of homicide concur in it; hence, from the identity of motive, these too are comprehended. ## Caput 4.

Doubt 4. All the more, because the Pontiff expressly did not include them, since he was speaking about infidel murderers against whom he could not impose penalties. Ita. n. 488. cum far. et aliis.

They note however, n. 493, with Alciat. Nevertheless, the second opinion with Cajetan. Næo. . num. 487. more probabili negat, nam quia poenae non sunt extendendae, et quia textus loquitur de his qui per assassinos infideles occiderant Christianos; unde formaliter diversum motivum legis apparet. 365. — Notandum hic, quod S. Pius V sub excommunicatione ipso facto prohibuit principibus ne permitterent agitationes taurorum sive ferarum in foro; et singulis Christianis ne cum illis congrederentur; item clericis ne talibus spectaculis assistissent.

However, Clement VIII later withdrew these indulgences for the kingdoms solely of Spain, excepting religious matters. See preceding chapter, canon 4, point 9, section 2, note 200 and following. Doubt I. From time to time it is lawful for him to kill himself or to maim himself.

Agere: An licet directe occidere populum, et an indirecte? An is it permissible to expose oneself to the danger of death in order to avoid a harsher death, etc.? Is it permissible to burn a ship with the danger of death? Does it follow that a virgin intends to suffer death by torture, which is excused?

Does it suffice that a thing kills itself in accordance with the command of the judge? Is a vein considered drawn to experience an antidote? Is it permitted for a Carthusian to abstain from flesh meats, even in extreme necessity?

Is it permissible to diminish one's life through mortifications? Is it

permissible to bind oneself by an obligation, for the purpose of tempering life, to remain in a state of extraordinary abstinence; or is one carried too far? Is it ever permissible to maim oneself?

Is it permissible to castrate boys? May one who has killed himself be buried in a sacred place? 366. — Riusp. Without divine authority, it is not permitted to mutilate oneself and intentionally kill oneself.

The reason is because it is contrary to charity and love, and it does an injury both to the thing itself and to God, who is the sole direct and absolute Lord of human life. "An occidens seipsum peccet. Etiam contra justitiam?" They affirm previously in chapter 4, point 5, section 4, number 444, with note 110.

Lugo, Fagn. etc.)... a Dixi 4. without divine authority, on account of Samson, and those-..... Digitized by Google » or accused ignorance. I said 2 directly, because indirectly when—allowing oneself to be killed, that is, doing something or omitting it from which death will certainly follow without one's intention: because the precept of preserving life, as an affirmative command, does not always obligate, but can be omitted for a good end, necessity, or great utility. St. Thomas Aquinas, II-II, qu. 64, art. 5, ad 4.

See Filius hinc translatio 29. Chapter 4, Question 5, and Becomes 2, 2, Text 3, Chapter 7, Question 8. Here it is resolved: 4. A soldier can, nay is bound to, remain in his station, even though a certain mora-liter indicates that he should be considered as one who would commit suicide.

Card. Lugo treated in book 40, question 4. By reason of a great common good, or on account of a special obligation from pact or office which they have as soldier, governor, bishop, and parish priest, lawfully can and ought to bear death. Regarding the rest, canon 2, point 2, §3, n. 33.

Likewise, one may lawfully destroy an enemy tower, or kill enemy forces, even if he knows himself to be endangered thereby; similarly, one may sink or burn a ship, so that the enemy not profit from it with grave damage to the republic, as they teach in 2. Chapter 9, number 32, line 5, chapter 44.

It is likewise licit to oppose oneself to a missile or an attack, in order to preserve the life of the prince, and to endure the death unjustly condemned of friends: . 2. c. 2. dub. 6. n. 30, or to cast oneself into shipwreck with a plank, according to . 4. c. 95. » (Even if the board has

already been seized, as against Soto, in article 3, section 4, point 1, middle part. Graver. et n. 34. cum aliis, quos infra reperies citatos n. 974. v.

This: from Decretals 29, article 5, ad 3, it is said that to expose one's own body to death for the sake of a friend is the most perfect act of virtue; hence the virtuous man more readily desires this act than his own bodily life. Sylvius, however, correctly observed that one cannot properly throw oneself into the sea in order to yield a table, since no one can positively kill himself (1). Hence, neither can anyone be baptized by throwing oneself into a river, as is said in the aforementioned place, chapter 2, section 4, note 50. Wherever however (cum n. 35.) there is an overturning of that tower and a burning of that ship (if indeed there be no hope of escape), timidly and only out of very grave necessity, for example (1) Sylvius says henceforth: if in the case of shipwreck he can abandon the table which he occupies and by whose help he might be saved: yet he could not yield that table to another, if he himself could not cast it into the sea, because this act of casting oneself into the sea seems to pertain to one's own death, unless the judgment be made that the danger of death is absent on account of lack of swimming skill.

He bids, for the sake of the good of the public, it seems to concede. See at the same place Lugo: n. 54. 52. and Malderum tr. 3. c. 4. dub. 49. tr. 4., r. 26. c. 44. n. 6. et seq.: « Although it is not permitted to a virgin directly to kill herself for the sake of preserving chastity, yet it is permissible for her to expose herself to a certain danger of death, even for the mere integrity of her body, if she reasonably supposed that consent would not be given, because this integrity is greatly esteemed. » See n. 3.

367. — Hence the Question. I. Is it licit to kill oneself in order to avoid a harsher death?

Resp. Directly to kill oneself is never allowed; and if men revered those who did this, one should say that they did so through divine inspiration. Thus commonly DD. said whatever S. Hieronymus said in c. 1, caus. 23, Question 5, where it is read: In persecutions one may not perish by one's own hand (except where chastity is endangered). But that could be explained without it, namely, neither excepting the case where chastity is endangered, as Lugo explains in d. 10, n. 50, with conclusion 2, as was taught above.

Secondly, and as previously stated in chapter 3, note 24, it also permits those who are detained in prison to escape a certain death sentence, or even perpetual imprisonment, according to note 16. Question NoneII. Et

licet navigi ignem inducere cum manifesto periculo vitae, ne illud ad manus hostium venerit?

Renz denies it in his work on the Fifth Precept, chapter 2, question 3. Contrary to this, Thomas Aquinas affirms it in his second two volumes, question 64, article 5. But Lugo affirms n. 52. cum . He says however that it is possible for a virgin to expose herself to a certain danger of life in order to preserve her chastity from an invader, but not to expose herself to a certain death: which does not seem improbable, since for the good of virtue the Doctors commonly assert that one may expose oneself to danger of life, e.g., yield one's table to a shipwrecked friend in need, as Busemb. say in the aforementioned 366.

All the more, because in the aforementioned case of rape there is always present the danger of consent. 368. — But here the question concerning the third point presses more. A virgin ought rather to be held as permitting herself to be killed than to be violated; suppose that the invader menaces her with death if she does not acquiesce in copulation? There is a double opinion: The first, which they hold, according to 1. c. 16. n. 1. 5. q. 1. art. 5. item de V. præcept. c. 1. punct. 5. §. 2. n. 127., says that although it may be possible, a woman is not nevertheless bound to suffer death; but she can then permissively allow herself, when the copula occurs, provided she positively resists with her will and the danger of consent is absent; because, as they say, such permission is not then moral cooperation; but only material, and therefore sufficiently excused by the danger of death.

The second opinion which they hold: with Hugo, Azor, and Bon., for in that woman that repose in copula is considered as an action. This reasoning, however, does not convince, because that state of rest in a woman cannot truly be called an action, since it is by no means positive; therefore, the first opinion (speaking speculatively) seems not to lack its probability. Nevertheless, it must not be denied that according to the sentiment which is absolutely recommended in practice, at least on account of the danger of consent, which easily arises in that permission. 369. — « 3.

It is permissible for the accused not to flee, and indeed even to spontaneously stand his ground, although he cannot positively destroy himself, even if this be committed to him by the judge. See d. 6: C. Luigo d. 10. From the just section 1, note 38, against Vasquez 1, 2, decision 173: chapter 3.

Here is the question: Can the accused, through the judge's command, "kill

himself"? Affirm Arag. et Cord. apud præc. c. 4. punct. 5. §. 1. n. 118. For if, they say, the guilty one can open his mouth so that poison may be poured into him, he can also draw it in with his hands, and thus even pierce himself with a sword; then the judge has constituted the guilty one as his own executioner, which seems probable according to Ebit de homic. n. 9, who cites Haunold. ibid. n. 117: with St. Thomas.

Bus. . and more commonly they deny it, because 'suicide, as intrinsically evil, cannot be commanded by a judge nor suffered by the culprit. They nevertheless commonly concede that a guilty party can ascend the scaffold, adapt his neck to the blade, etc., since these actions merely aim at death. However, it must be noted gravely that those who, according to n. 120 etc., commit a grave sin when they drink poison or allow themselves to be bitten by a viper in order to experiment with an antidote; unless it is certain to them, from the experiment itself or the judgment of experts, that no probable risk of death will result; this approves Hanno.

And likewise it must be said concerning tightrope walkers, who play upon a rope in high places with probable danger to life; and concerning the same, see Sylv. 370. — « 4. Even though in extreme illness a Carthusian can preserve life by eating flesh (even in probable danger of death, as Az. de leg. c. 2. punct. 7. n. 437 and 438 call the first judgment sufficiently probable); "that is, it may lawfully be done, and he does not thereby sin, who unknowingly provides food from flesh"; t. 7. r. 70; yet lawfully and commendably also omits it when there is a certain danger of death" (And this they consider to be certain) - and taken from cap. 5. d. 4. r. 32 from Victor - Lor. etc., because reasonably he neglects life for the good of the Order. C. de Lugo d. 40. n. 33. contra Azor, et c. 7. ubi decepte tenebri carnibus vesci, si exigit necessitas, ita ut aliter ultam conservare, non possit: quod consilium 1. 5. c. 4. d. 35. cum aliis sic distinguit, si necessitas vescendi sit ab intrinseco, ut. gr. morbo ex quo judicio medicorum convalescere non possit nisi esu carnium, ait probabilius esse eum non tenebri iis vesci (tametsi licite possit) quia morietur naturaliter ex morbo cujus ipse non est causa: si vero sit ab extrinseco, ut. gr. si ob inopiam aliorum cibo-fum fame moriendum esset, tenebri iis vesci, quia mors illa cum sit violenta ipsi imputaretur.

» (And this they judge rightly as the most certain point, §2. n. 27. and of law chapter number 135.) - 374. - - 5. It is permissible to moderately afflict flesh with meat during vigils and fasts: yet he who, noticing life notably diminish thereby, nevertheless consents, sins gravely, as notes 3. de just. t. 3. p. 3. c. 4. n. 5., excusing this conduct on account of good faith and zeal for pleasing God. See Bonaventurae, de duodecim predicationibus, secunda secundae, ultima secunda, p. 7, n. 9; et in justitie

dictionario, decima, secta quarta, nn. 32, 33 et 36 etc., ubi recte notat, aliquid aliud esse procurare abbreviationem vitae seu mortem positivè sibi afferre: aliud permittere vel periculum ejus subire vel non adhibere media ad avertendam.

He first says that it is illicit; for example, to shorten life notably through indiscreet penances and excessive bodily mortifications; later, however, he frequently permits it. "(In the same way, Lugo in the just. d. 10: sect. 4. n. 32." Cont Tourn. de 5. Question 3. r. 2. et punct. 2. §. 2. n. 30. cum Gran. : si licebit militibus apponere vitam tot ærumnis et periculis mortis; cur non libebit virgine religioso austeritates corporales amplecti, ut rebellendi carmen in servitutem redigat? Ideoque non tenebri Carthusianum carnibus exæci nec aliquem alium uti pretiosà et exquisità medicinè ad mortem vitandam; nec sæcularem relicto domicilio quærere subrorem aërem extra patriam.

» (As Lugo states in ibid., cap. num. 26: it suffices to use the means of the ordaining minister.) - 372. - - 6. The sick are excused who a little before death petition to be placed in the earth for the cause of lamentation or good example, because they do not prevent 190 Lib. 4. Treatise 4.

Concerning the fifth commandment of the Decalogue. "to abbreviate life." See.

Vasques l.c., Addit. 3, t. 3, p. » 3, c. 4, n. 5: non teneri quemquam mediis extraordinaris et nimis duris, v.g., abscissione carris, etc., vitam abbreviare; nisi tamen ea communi bono sit necessaria. "(Thus commonly Lugo, Soto, ibid., point 3, number 50." The same thing is taught in 2.

The fourth case at the end with Sylvio. He nevertheless adds that the father, tutor, or any other superior can command the amputation of a subject's limb if he is to endure only moderate pain, contrary to Henno) « See in opusc. tom. 1. l. 5. Chapter 4, Question 34.

Where he says: "If one who is sick in danger of death, and there is hope of salvation, cannot reject medicines." It does not seem, however, that a sick virgin (speaking per se) is held to endure the hands of a physician or surgeon when this is for her most grievous thing, and even more so than death itself, she dreads it. Esc. e. 7. c. 8. ex Turian. sum. p. 1. c. 263. d. 5.

» (As punctuated point 2. §. 2. n. 28. with .) 373. — « Resp. 2. It is not permissible to mutilate oneself, unless it be necessary for the conservation of the whole body, because no one is an absolute master of his own limbs.

Whereupon the resolution is: "1." It is not permissible to castrate oneself for the sake of preserving chastity or subduing temptations, because this is not necessary for that end. S. Th. 2.

2. q. 65. art. 1. t. 20. c. 4. q. 3. etc. 374. — 2. Parents who sin by restraining their consenting children so that they may be useful for singing. See III. Tr. III. C. 1.

It is asked whether it is permissible to castrate boys in order to preserve their voices? The first opinion, which is more probable, denies this (1) according to Buscmb., here Sporer on the V. precept. c. 3, n. 33; and punct. 3, n. 45; and on the V. precept. c. 1, punct. 5, §. 4, n. 121, in fine, and similarly in the aforementioned place. Lugo, la tamen secunda sententia, quam tenent 6 c. 2 § 3 n. 4 de rest dict n. 45 et probabilem putant c. 4 § 4 . 29 (qui insinuandam censet ob praxim toleratam) affirmat id licere, modo absit morale periculum vitæ, et non fiat pueris invitis.

The reason for these things is, first, because eunuchs are useful to the common good in singing sweetly in churches; secondly, because the preservation of their voice, which is no small matter in what they have to say, is a good thing, since by that condition they notably improve and through the whole course of life notable and abundant sustenance comes to them; and therefore it seems to be a just cause only so much good that such an injury to the body can be lawfully repaired; even more so because this is brought into use and tolerated by the Church, as says Ebet. 375: “You ask whether one who has killed himself should be buried in holy ground. ‘Response.’ The Church canons forbid this; yet they are not to be understood as prohibiting those who out of fury, madness, or passion of most grievous sadness, conceived such a fantasy, or who truly grieved about it before death. That is to say, if it should be established that someone has killed himself, and there is doubt whether he did so deliberately or from a disturbed mind, in practice he would be deprived of sacred burial, since it is presumed according to external action that the will was present: unless contrary evidence is gathered from the circumstances.

If however it is doubted whether he was precipitated by himself or by another, for instance, into the water; such a crime, so atrocious and contrary to nature, is not presumed without evident indications. d. 20. See c. n. 8. » See also Escob., e., 7, q., 8, where he says that he who dies from a wound accepted in a duel, if alive he departed from the place, should not

be deprived of ecclesiastical censure.

» ## DUBIUM II. ### Whether and in what manner it is permissible to kill a malefactor? 376 Is it permissible to kill proscribed persons by one's own authority? 377 Is it permissible for a prince to execute criminals before they have been condemned by sentence? 378 Is it ever permissible for clerics to condemn criminals to death? 379 Must the judge grant time to the accused for the assumption of the sacraments of penance and Eucharist? 376. — « Rnsse. Outside the case of necessary defense, of which below, no one is permitted to do this, unless by public authority and in accordance with the order of law, as is evident from Ecclus. 22 and Rom. 43 (4). Here it is fitting to refer to what St. Alphonsus says in the 8th chapter of his work on tyrannicide. But here it must be considered whether it is ever permissible to order a tyrant to be killed.

Preferring to say that since there are two ways in which a prince can be a tyrant, namely, in title and in governance. A tyrant in title is that one who, without any right, by force occupies a state, displacing from it its legitimate lord: or he who, having unjustly occupied an alienated state, thereafter peaceably possesses it. Tyrannus vero in regimine est ille, qui justo titulo regnum possidet, sed injuste illud regit, plures injustitias et immanitates exercendo.

Having set forth these points, some authors, but few, with an inappropriate and illicit authority, have rashly said that it is licit to put to death both a tyrannus in titulo and a tyrannus in regimine. Others, however, deny that it is permissible to kill a tyrant in governance, even if he governs unjustly; and they also deny that it is permissible to kill a tyrant in title, however unjustly he rules; whereupon resolves: « 4. It is not lawful for a husband to put away his wife, or for a father to expose his daughter, those found in addition: because they do not have public authority for that; and laws, although he unjustly occupied the kingdom, nevertheless afterward governed it peaceably.

On the contrary, however, they say that it is licit to kill a prince who has unjustly coveted the kingdom by force, and who continues to pursue this possession by force, against the will of those subject to his rule, who, moved by fear, are compelled to submit to him. But we do not say that it is always permissible for private individuals to kill a tyrant, whether primarily or secondarily: they should venerate and obey their rulers according to the divine precept, even though unjustly and pervertedly, as teaches St. Peter: Servants are subject to masters in all fear, not only to those who are good and moderate, but also to those who are unreasonable. 1. Petri 2: 18. Whereupon D. says this about S. Thomas: that although

someone unjustly may have usurped another's state falsely, if afterwards those subject to him should recognize him as lord, or if both the former lord and some other prince should exceed their superior dominion over the realm, then a legitimate lord would emerge: He who seizes dominion by violence does not become a lord; for the power is present whereby someone may repel such a dominion; unless afterwards the lord has been established through the consent of the subjects or through the authority of the Superior.

St. Thomas, Second Sentences, Distinction 4, Question 2, Article 2. Wherefore since an usurper can become a just lord of the kingdom through multiplication, it necessarily pertains to the subjects always to obey their actual lords; even so much as to judge whether they have held office justly or unjustly. Moreover, subjects cannot refuse obedience to such lords, still less are they able to deprive them of life and possession of the kingdom. It is the duty of subjects to obey, and not to judge concerning the measure of punishment which solely lies at the disposal of God for His own affairs, nor does it depend upon any earthly temporal power.

Si subditi de titulo aut possessione principis judicium ferre possent, nunquam deisset eis, qui pravo animo affecti sunt, postextum invenire ad se constatandos adversitas principem. Azorius wrote: This judgment concerning the lawful opposition to a tyrant in title, although confirmed by the testimony of many authors, remains doubtful to me nonetheless. Namque etiamsi evidencia palrati sceleris probationem non postulat, tamen requirit sententiam.

Nevertheless, concerning such a tyrant who has no right or title in the kingdom; yet he has acquired possession thereof which cannot be dispossessed without being deprived and judged. The reasons which this author brings forth in favor of the disapproved opinion, that it is licit to take away the life of a tyrant from his title, are very well founded; for no one, neither prince nor prelate, can have his life and possessions deprived of him, without first being heard or at least condemned by his legitimate judge. Subjects, however, can never have the right to pass judgment on their actual ruler.

But less rightly did he say: This judgment is doubtful to me; he should have said: Imperative, false, and most false to me it is, according to what P. Alphonsus Salmeron had written in tom. 13, p. 14 of his apostolic epistle. V. When he said: Since it is commanded us to obey princes indistinctly even the wicked ones, we must obey them; yet in those things wherein they do not contravene the Lord. Moreover, and furthermore, quotha even if he had at first unjustly usurped the kingdom, we ought to

esteem him as lord on that same account, because it pertains least of all to private individuals to judge concerning the rights of princes; therefore also privates must not judge concerning princes, even though they have not justly occupied the kingdom; and while they reign in part, the people are rightly punished under his tyranny..... But there is another reason more urgent and wider-ranging, on account of which it never is permitted to deprive a prince of life, even if he unjustly had occupied the kingdom and was unjustly possessed.

They overlook the authority of the contrary: but he who occupies a foreign kingdom without any title and possesses it without any reason, is neither its lord nor prince, but a thief and an usurper: therefore (let me recapitulate) let him be called a thief, an usurper, and not a prince or lord: is that man then just anyone? Nay, he himself is a man who should not deprive another of life or goods which the latter does not possess. It is the common doctrine of the holy fathers that no private individuals, permitting this in civil law, are corrected according to canonical law as being unjust. Herefore was the contrary opinion condemned by Alexander.

Eighth. Thus it is with those who are proscribed; even though any authority permits it to be lawful to kill a man, whether a private individual and howsoever unjust he may be, if you have public authority over him, or unless this is necessary in order to save one's own life; but considering the matter from the perspective of public authority, it is certain that the axiom praised by St. Augustine is true: He who kills an evil-doer without any public administration will be judged to have acted with excessive arrogance. To you is given first place in civil matters.

Of God, cap. 28. in medio. Thomas however provides a clear explanation regarding this matter, stating: To kill a malefactor is permitted to the extent that it is ordered to the welfare of the entire community. 1. 2. q. 64. a b. Then he adds that to kill malefactors because it is permitted to princes who have public authority and care for the common good of all: For the charge of the common good has been given to princes who possess public authority; hence only they are allowed to kill malefactors and not private individuals.... Therefore, if illicitly, or even by an inner tyrant in title, one were to usurp a kingdom which he himself had occupied without any right, and unjustly possessed it, it will be all the more illicit to contrive death against a prince who holds the kingdom justly.

Moreover, if they are lacking in public authority, it is forbidden to destroy any impious person whatsoever by reason of their insignificance, as much as it will be permitted for a private individual to kill his own prince unjustly. Regnum autem omnino est in communitate subditorum quandam

adesse auctoritatem suppositorum et à principe independentem, ita ut casu quo princeps perversè regnet, tota communitas eam regno et vita exspoliare possit. The principle of John Gerson was excessively harmful in this matter, namely that he asserted that the monarch can legitimately be judged by the general nation, as if the kingdom were governed; for he said that since the nation regards the prince as the whole with respect to the kingdom, while the prince is only a part, there necessarily must exist supreme authority over him.

I ask: the principle is not only false, but perniciously harmful; for in this way supreme powers would be easily corrupted; and a great deal of desolation would come to both state and kingdom. St. Thomas does not recognize supreme authority except that which the princes have, to whom the care of the common good is entrusted: The care of all the good has been committed to those princes who possess public authority. Therefore, if the prince is perverse; in that case the people would be held to a heavier penalty, yet still bound to offer obedience and resistance to him, since they can never have justice from his actions by which to judge the deeds of the prince, and thus condemn him to death or to something resembling life or kingdom... Moreover: it should be considered; for if such a case were to occur, namely that the prince kills his own subjects, what would once be greater evil of bad governance, that is either when the prince perishes, or when his death interferes with some matter, as such things might happen?

After the subjects had been thus rashly stirred up against their prince, and had polluted his blood with impiety, how many quarrels, schisms, and civil wars would immediately arise among themselves? Moreover, what robberies, sacrileges, and outrages would ensue, since those who were subjected to the people would have no one to subject them to public justice, whose fear had already been cut off? This S. Thomas wished to say (In 20 de regimine principum I 1 c 6), where he wrote: Behold, this is dangerous for the multitude and its rulers, if anyone should rashly attempt the protection of the prince's blood even before the shedding of it, lest also tyrants be necessary. Hence it is that although the Gentile emperors were persecutors of the Church and unjust, yet because they themselves possessed authority, God required that obedience itself be rendered in all licit matters. Whence Lessius wrote (de just. et jure t. 1. c. 9. dub. c. 2. 11): Princeps etiam tyrannice regat, tamen manet Superior; unde Scriptura jubet: qui rebus licitis parere principibus ethnicis tamquam Superioribus, etsi maximi esset tyranni, utpote qua Ecclesiam persequerentur et ad impletatem cogerent; ergo non potestis subdito inferiori.

The same was written by Molina (On Justice etc., vol. 4, part 3, question 6): There is a tyrant, even though he may be a true lord of the republic in

which public tyranny is given; and this is not unjustly, since it is necessary for the defense of the republic. Now if one has been killed, do not be put to death outside the territory of the proscribing prince: unless it is presumed that another prince grants permission. . precedent chapter 1, point 2, note 49. See note 380. vers.

Decius) « Nevertheless, they sin who do it not out of zeal for justice, but out of hatred, or for the cause of private vengeance. » See c. 377. – “2.” The prince or magistrate (speaking regularly) commits sin, as will be seen below in lib. 5, cap. 3, d. 4, who orders the execution of those not summoned to appear, yet administers it unjustly: this manner of interfering with private affairs is a crime against a tyrant.

Gregory of Valentia wrote likewise (loc. 3, disp., qu. 8): A tyrant, who is already condemned and commonly hated, lawfully having another authority to govern, may not legitimately kill any particular person. The Cardinal Toleius also wrote (Instruct. l. 5. e. 6. n. 16.): He who tyrannically administers them, although he has indeed the title thereof, yet treats his subjects with tyranny, is not permitted to kill; and whoever asserts the contrary is condemned as heretical in the Council of Constantinople. Cajetanus has written in his work, Book 2, Chapter 2, Question 64, Article 3.

Salo 1. 5. qu. 1. art. 1. Prado chapter 20. question 1. section 3. note 21. Tapia book 5. question 7. article 3. number 2.

Bonac. d. 2. q. ult. sect. 2. p. 3. n. 2. cum Silvestro, Bannes, et Serra in loco citato dicitur Thome. The same was written by Suares in defense. Of Faith. L. 6, c. 4. He said this judgment to be not only common but certain: We say that the prince cannot be justly killed by any private authority on account of tyranny or kingdom, or on account of any crimes.

It has been asserted to be common and certain; conforming to the precept of Peter (Epist. 1. cap. 1. v. 16.): "Subjects should submit to every creature for the sake of God, etc." However, it is more specifically defined, and its contrary condemned as heretical in the Council of Constantinople, session 18. In the ante-chamber, which was as heretical in the aforementioned Council: Any tyrant can and ought to lawfully and meritously be killed by any of his vassals or subjects, even through the insidious machinations of domestics, and by means of flatteries, subterfuges, or adulation, notwithstanding any oaths sworn to him or any alliances concluded with him; nor shall any such sentence be condemned or judicial mandate issued against it. Quale remedium adest, si regimis principis esset excessivè

tyrannicus? Remedium quod suppetit, ait S. Thomas, est ad Deum recurrere, ut auxilium præbeat.

And if altogether human aid cannot be sought against the tyrant, one must recur to the King of all, God, who is an helper in opportune times. Furthermore, the most learned Dominicus Soto writes (lib. 5, qu. 1, art. 8): If he who is adored, whether king, prince, or some other very useful person for the republic, and whose dignity is degraded and vile, such that nothing of him is necessary for the republic, then death must be submitted to by the degraded person, and defense must be omitted; approve thou this murder of a prince. Hoc judicium placet P. Danieli Concina, dicenti unumquemque de jure naturae et charitatis magis amare propriam quam alienam vitam.

But since this sentiment is not obtained, it pleases me more and seems most probable; for the reason is that each one is bound to prefer the common good to all his temporal goods, and to suffer injury to every temporal thing in order to avoid a very great harm to the community, and indeed the community would sustain this very great harm, as we have considered above, if the prince should kill his own subjects. It is indeed lawful to kill an unjust aggressor deprived of means to escape death, with moderation in the protection of legitimate tutelage, if no way of avoiding death is apparent. But what pertains to the life of individuals does not have a place with regard to the life of rulers.

Surely a very different reason must be held between the lives of private individuals and those of princes; for the safety of peoples and the public good are exceedingly necessary to the sacred persons and precious lives of kings according to the Word of the Lord. If an unjust aggressor is killed, harm befalls only himself, and not the republic; on the contrary, his death will contribute to the common good by restraining the insolence of the rash; but if a prince should lose his life through the hands of his own subjects, a common evil (as we have observed above) arises, and an immense one at that, due to innumerable labors, schemes, and follies which will consequently ensue. Edit.

non non auditos, vel non damnatos, etsi privatâ scientiâ constet eos esse nocentes; quia ex jure naturæ actus publicus fieri debet ex scientia, et auctoritate publica. See Caj. v. Homicide, Fill. tr. 29. c. 2.

Question 6, number 27. Bonaventura, loc. cit., par. 4, n. 7. See also below in lib. 5, quaest. 3, disp. 4.

Receive 4. if the crime be notorious. 2. If there were a danger of sedition, or if it would be a disgrace to the king, if legal proceedings were taken. Num. 18.) 378. — It must here be noted for clerics, even those having haïcalem power, that it is illicit to condemn criminals to capital punishment, according to cap. Continentia, de aer. percussore. Nevertheless, in this regard, the Pope can dispense, as stated ibid. n. 43 and 44 with St. Thomas, etc. Similarly, bishops themselves, or those similar to them, possessing temporal dominion over some place, can lawfully commit their power to laics for causes of bloodshed, as stated ibid. n. 46 with St. Thomas.

It is noted that the judge is bound to seriously grant a sufficient time to the accused for confession, even though there be fear of the danger of robbery. . n. 24. with Navarr. Sylv. He is also bound to grant time for the reception of communion (unless indeed grave damage be feared); when the accused is then at the point of death, in which case the precept of communion binds by divine law; . cum . Pius V. in the same place.

And then even though fasting, the accused can communicate, because then truly he is in the article of death, as with Lugo, etc. And it can be laudably communicated on the same day of death, provided that communion precede by an hour the execution, as Sa says, and ibid., n. 22. Note 3: that if the guilty party refuses to confess his sins after exhortation, he may lawfully be put to death by the executioner, because then his condemnation is ascribed to his own guilt. . n. 23. with and among others. DUBIUM III.

An, et quomodo liceat occidere privatâ auctoritate iniquum aggressorem? 388. Is it permissible to defend one's life against an invader with deadly force? Whether, however, it is forbidden to those on trial and condemned by a precise banishment to defend themselves with arms? 389.

Is it permissible for an honorable man to kill an invader of his honor? But is it permissible for a layman or an ecclesiastic to kill if he can flee without risk to his life? And what if he has already insulted? 389.

See more resolutions by P. Busembai. 393. Question 1. Is it licit to kill a thief of things of great value?

Quæst. 2. How great ought this heat to be? And what if the value is moderate, but the thing is taken away by violence?

QUESTION 3 What if the thief has already taken the thing by force, and

resists the lord who wishes to recover it? 334. Quest. 4

Whether it is licit for clerics and religious to kill a thief? And then finally incur irregularity? Is it licit to defend oneself with arms through servants?

Is it licit to kill an intruder for the sake of chastity? 337 Is it licit to pre-emptively strike an attacker? 338 Is it licit to kill a false accuser? 339 To defend innocence from darkness and bridge with life, is it licit? 340 Even when the intruder dies? 341 Is it licit to kill an intruder for the sake of another's honor or chastity? And what if it is a consenting woman? Are we permitted to defend good intentions in darkness even with the killing of a thief? — “Resp.” Nature permits that you use force to repel, and that you strike down an aggressor who seeks to take your life, or what is necessary for such a life to be endangered by a person, namely temporal goods, honors, integrity of pudicity, and bodily integrity; so as to prevent harm, with moderation in defense, without inflicting greater damage, nor using greater force than necessary to ward off the injury.

Thus commonly in S. Thomae I. 2. 3. quaest. 74. art. 7. dub. 8. 4. 5. (Nota hoc, errare nuper auctorem libri cui titulus: Esposizione della Dottrina christiana dicendo quod S. Th. cum S. Aug. negant licitum esse occidere aggressorem ob defendendam proprie vix nam Angelicus expressè opposuit docens l. c. inquit: Nec est necessarium ad salu tem, ut homo actum moderatae tutelae praetermittat ad evitandam occisionem alterius. He adds merely in the response: to the first; and there he explains the doctrine of St. Augustine, saying that when one kills, one does not intend the death of another, but solely one's own defense. And since D. de 5. prae. n. 8 where it is said: It is permitted to kill another for the cause of defending one's own salvation; he subjoins, it sufficiently appears that this kind of homicide is not forbidden by divine law. And thus Lugo on Justice, lib. 10, n. 438, c. 9, d. 8, with S. Fulgentius in On Penitence, lib. 5, praeceptum cap. 4, punct. 4, § 2, n. 54.

This is proven by St. Thomas in the aforementioned place. Bus. ex illo v. 2. ubi dicitur: Si effringens fur domum, sive suffodiens inventus fuerit, et accepto vulnere martuus fuerit, percussor non erit reus sanguinis. Here the Holy Doctor subjoins: But much more lawful is it to defend one's own life than the person and house.

The same is taught by St. Bonaventure. Sermon 6 on the 40th Psalm. Saint Augustine. 2. 7. c. 8. §. 4. prae. sect. 2. punct. 4. with Estius, Sylvius, Pontanus, Natalis.

Wings and to countless others, him Salonius, who calls the opposite opinion temerarious, when he responds commonly with doctors and many texts, especially in chapter 3 and in chapters 4, 5, 6, 7, and 8 on homicide, and in chapter Si vero 3 on accessions where it is said: When force repels force, all laws will be permitted and every right will be abandoned. But thou shalt say: He who slew an unjust invader for the defense of his own life exceeded but slightly, preferring a temporal life to the nearness of eternal life. It is responded to according to c. ad. 2.

I confess. Chapter 2. Book 9. Number 54. So托词无效，他被判处两年监禁。 Petrocar. 1. 4. c. 3. q. 3. and similarly, we are to prefer the good of a higher order's proximate good to our own inferior good, since life, for example, is absolutely necessary for the salvation of our neighbor's spirit; thus, if an infant were about to die without baptism.

On the other hand, if the invader himself through his own malice casts himself into the danger of eternal damnation; then indeed whoever has a right to his own life may lawfully use force in defense thereof, even though it lead to the damnation of the invader. The same reasoning holds if one fears a grave wound or deformity from the invader; cf. Decretals 40, c. 8, punct. 4, n. 45 and 46, and before, c. 3, q. 4. And the same reasoning applies to the defense of honor and strength of virtue, as will be shown below.

Hence also a cleric or a religious can kill an invader of his life, and then he does not incur excommunication or irregularity, as is stated at the end with others from the said chapter Stipipastii, and Clement. If a furious person [is involved], see the discussion on censorship 1. T. n. 582. Et si autem clericus irregularis factus fuerit per adulterium et occidat eum quem ad se defendendum a marito duxerit?

See below here n. 398. v. In order, where a distinction is made, whether an invasion is to be anticipated proximately or remotely. I said that it is permissible to kill; for no one is bound to kill the aggressor, but licitly and commendably one can permit one’s own death so that another may not be deprived of a temporal and eternal life, as is commonly said with St. Anthony.

Syll. et non. 47. cum et . They receive 4. at the end when life would be invaded very much for the good of the common welfare. They receive 2 when even St. Anthony and [the number] 4 agree.

It is not lawful to kill ministers of justice by whom one is drawn to prison,

» or « to undergo punishment » (See 1. 5. n. 279.) « nor is it permitted to do this as a proscription, as noted from common law. 3. t. 3. p. 2. because they are not aggressors. ... Decus et Carterius apud 6. c. 4. n. 8. et plures auctores apud Ctrum, et Nellum, ut refert Azor, p. 3. c. 4. q. 41. tenent, Ktium esse proscriptis se defendere, quia lex humana auferre nequit jus; quod unusquisque habet ad suam vitam tuendam; et probabilem Hinc opinionem putat Azor, 1. c. et idem videtur sentire c. Sed omnino tenenda est opposita cum prae. c. 3. q. 3. Reason, because the human law can rightly assign the right to kill the guilty, and vice versa, it can take away the right of self-defense; otherwise they could even defend themselves from a murderer, which no one admits.

It is certain, however, that it is permitted to kill the proscribed; not, indeed, others who are guilty; even though they might be public robbers and even capitally condemned, unless they themselves should wish to deprive you of a great quantity (as will be said below n. 383.). Thus Croix lib. 3. part. 4. n. 796. et et 56. Hence sin commit the satellites or soldiers, who, having been commanded the capture of a defendant whose arrest had been entrusted to them, kill him while fleeing or resisting, unless this be commanded by public authority: and this can happen only if the defendant must be captured sufficiently infamous for some capital crime, and cannot otherwise be taken; and also, upon dismissal of such duty, greater evils are feared from himself. Thus Croix, n. 797.

Elbet num. 54. et tr. 7. r. 44. oum Farinae. et Claro. 384. — « 2. Even though it is an insult, for example, if to a man honored one were to say, "You lie," it would not be permissible to kill another, insofar as it can otherwise be repelled and customarily is (t. 4. » r. 42. et 43.); it is nevertheless permissible to strike with a stick or a club a man who is very highly honored if he attempts to assault him in such a way that he cannot be repelled otherwise and as is customary (t. 4.

Lessius, Hurtad. et alii 42. But in practice most strictly it is permitted to make use of the aforementioned opinion, for Sylvius in 2. 2. Question 64. art. 7. qu. 9. rightly thus states: Even if honor is a better good than wealth, or we consider no case, or an extremely rare one, where it would be permissible to kill the aggressor merely for defense of honor. If by a rod, or by a blow with a stick, or by wounding an arm, or in some other manner one can inflict unjust violence, it is not permissible to kill.

Wherefore, if there be a person such that it is not dishonorable for him to flee, he ought rather to flee if he can, and save himself: unless there be danger in fleeing; and thus to be held according to Lugo, d. 40, n. 166, and c. 25, punct. 4, §. 2, n. 60, against some others ibid., n. 59, who say

unreasonably that even the flight of a commoner is dishonorable. Wherefore clerics and religious are bound to flee if they can do so without risk to their lives, because it is not dishonorable but honorable for them to flee, as Lugo states in the aforementioned passage. But also with regard to laity and nobility, Sylvius prudently observes in 2. 2. Question 64. art. 7. q. 9., saying: even if honor is considered a better thing than riches or no good at all, or very rare, we deem it an occasion rather dishonorable to kill the aggressor for defense of honor alone. But otherwise, if it is disgraceful to flee, then indeed it is not permitted. To a nobleman or to an official in military matters; unless again, at this time and now, it would not be disgraceful for such a one on account of the excellence of the invader, or for some other qualities of his, e.g., because he is drunk or insane; for such a one it is not permitted to kill when he can flee. Tract. 4, R. 9.

See » . 3. tom. 3. part. 3. c. 3. 382. — « 4. It is not permissible to kill a thief on account of trifling matters. Hence was written the opinion saying that a thief could be killed for the preservation of even one aureus, by Innocent.

XI. prop. 34. Licet tamen, si quis auferat honorem valde notabilem aut bona magni momenti, nisi tamen alia via, vel juris, vel aliter, arceantur aut recuperari possint. Wherefore, when laws signify that a night-time thief may be killed with impunity, they do not assume that night-time thefts are generally such that they cannot otherwise be arrested, but daytime thefts can be.

Otherwise, if a nocturnal thief can be captured, he should not be killed; and if a diurnal thief cannot be captured or prevented from taking away what he takes except by killing him, then it is permissible to do so: yet these things should not be of slight importance, nor less than the value of one ounce of gold, according to t. 3. d. 16. n. 7. See rather, according to what is said by others in the fourth book, fourth chapter forty-eight: although this may seem excessively lax, Bonaventure does not consider it of great value, even if it be worth three or four gold coins. If however such a thing as that theft or usury, for example, is committed by a thief in the presence and resistance of the lord, or custodian, or if he makes use of force against them, for instance, begins to strike back with iron him who repeats the resistance, they permit the killing. Likewise, if it be doubtful whether the thing can otherwise be saved or recovered.

Bon. l. c. quia nemo, inquit, tenetur se exponere periculo amittendi res suas. See Navar. - c. - 5. It is more probable that this also be permitted to clerics and religious for good temporal reasons.

But as regards the laws commonly affirmed in opposition thereto, understand this: when there is not observed a moderation in the innocent defense. . c. » (With others below, see n. 384.) « d. 4. q. 8. d. 4. Esc. e. 7. - c. 8. ubi etiam docet ex d. 4. n. 68. licere virginibus occidere invasorem pudicitiae, si violantem nequeant aliter evadere. » (See below n. 386.) - 6.

When nevertheless an unjust aggressor is in danger of salvation, one may from charity spare him and endure the injury rather: » (See what has been said in note 380. « but is not bound to do so, because another through his own malice is in this peril. . - 7. It is not permissible to kill if injury has already been inflicted, or the aggressor has already fled; because that would not be defending oneself, but seeking vengeance, as it should not be. But Henry and n. 5, c. 9, § 4, say that if the injured party were to make a great loss of honor, he would be able to pursue and punish the fugitive, as much as was necessary for the defense of his honor. (However, the opposite is to be held entirely with Lugo d. 10, ex n. 189, et seq., 17, n. 9, with Soto ap.)

Lugo. Reason, because then honor is not recovered in itself, but through the damage of another among the wicked men, which is intrinsically evil; and I cannot understand why the contrary opinion should not be proscribed as condemned by Prop. 30 and Innoc. XI. relata n. 381, whereby it was permitted to pursue the striker who flees, since otherwise ignominy could not be avoided in any other way.) However, C. Lugo, tractatus 7, allows this nevertheless.

Misc. R. 47. licere furem fugientem, v.g., cum equo tuo conficere tela vel sagitta, quia invasio adhuc durat. » (See below Qu. 4. at the end.) Although indeed this is not permissible after he has received security, yet if you cannot recover your thing by judicial process, you can enter into the place where it is detained and vindicate it for yourself, and if another obstructs with force, repel that force with force. . Mald. resol. 37. and part. 8. resol. 47. « Here observe four propositions condemned: I.

Prop. 34. ab Innoc. XI. quae dicebat: Regulariter possum occidere furem pro conservatione unius aurei. II.

Prop. 32. Not only is it licit to defend oneself with an occisive defense that we actually possess and have in act, but also those to which we have a just claim and which we hope to possess. III.

Prop. 33. It is licit for both an heir and a legatee against an unjustly

impeding person to defend themselves in such a way that the inheritance does not reach its destination or the legacy is not discharged; similarly, it is lawful for one having a right in a See or benefice against an unjust impediment of possession to do so. IV.

Propositio est 48. auctore Alexandro. VII. Damned: Although it is permissible to kill a false accuser, false witnesses, and even a judge from whom an unjust sentence certainly imminent cannot be avoided by another's intervention, so that an innocent person may avoid harm. His positis.

It is asked whether it is licit to kill a thief of great importance? The first opinion denies it, which is held in the treatise of Gerson on the Eucharist and . Cov.

Sylv. et de quinto praecedenti capitulum unum, punctum quartum, sectio quarta, numerus octoginta. Reason, as they say, because from the precept of charity we must prefer the life of the neighbor to temporal things. They approve that on account of this precept.

We have received it from the man where the Pontiff condemned two religious persons; because one of them had killed two robbers, and was attempting to tear away his clothes, since it was more expedient to bear the loss of things, rather than to become too harshly incensed for trifling and transitory matters concerning others. Nevertheless, however, the second most probable and common opinion asserts this; and this is held by St. Anthony 3. p. t. 4. c. 3. §. 15. and idem c. 3. in princ. ex Jac. Aret. et Petro sic tradit: Nam, si possum occidere furem, ubi non cognosco, et non potest ei de rebus furatis provideri per judicem (ut licet).

Thief. ff. to l. Antonin. l.c. § 2. dicens: Item licita est defensio cum moderamine, non solum pro persona, sed etiam pro rebus; et non solum pro suis, sed etiam pro rebus sibi depositis, et commodatis, et etiam pro rebus amicorum, et propinquorum suorum, eos scilicet adjuvando. Sylvius likewise holds in 2. 2. q. 64. art. 7. q. 8., saying that it is licit to kill an assailant of things if they are of great moment and cannot otherwise be defended or recovered except through the death of the despoiler.

While someone attacks someone else, Dominicus Soto writes (de just. et jur. l. 5. q. 4. art. 3.): Dum quis quempiam aggreditur, ## Caput 4. Doubt 3. whether he may kill or seize it by force in order to repel by violence what is about to be taken from him: The same opinion Angelus holds. Defense, n. 4.

Sylvest. o: Excommunication, in 6. n. 8. Armilla v. Defense, number 2.

He also taught formerly D. Raymond in book 2 on robbery §18, where he said thus: I cannot repel the possession, unless I kill those, and thus such a defense will be lawful. The same [author] teaches in 'Sotus' on justice, lib. 5, q. 4, art. 8, cap. 9, d: 41. Lugo 4. 10. n. 175.

Cajetan 2. 2. q. 64. art. 7. Croc' l. 3. p. 4. n. 808. n: 64. Nonc. de quinto praecepto caput tertium quaestio quinta et n. 81 cimibotac.

Reply: Prado, etc., and clearly adheres to St. Thomas 2-2, q. 64, dite? q: v: 'But on the contrary. And it is proved by the fourth from that in Exodus, c. 22: v. 2. Proved: as we have reported above n. 380. From that text, S. Th. concludes much more rigorously to guard one's life, saying: But it is much more lawful to defend another's person than one's own house; therefore he assumes as certain the text permitting the invader of goods to be killed.

Nor does it contradict the words which are read after the solemn words in the same text of Exodus, namely: "And if a man shall have committed murder hereby, he has shed blood, and by his own death shall he be punished." Nam bene respondet, quod id non dicitor ab: 'eo quia post lucem periculum mortis abest, sed quia jam meridiē fur melius agnosci potest, et sic facilius bona recuperari possunt in judicio; insuper, quia orto sole fur potest repele, invocato vicinorum auxilio. It is proved from c. Dilecto de sent: exc. in 6. where it is said by Ebeuit truly to the decano, if the aforementioned bailiff shall have presumed to injure his goods with violence:... to defend himself.

Then he adds: 'And since against his excessive power a sufficient temporary defense perhaps did not arrive for him, etc. From which the Pope concludes that he may defend himself with secular arms, if his powers were sufficient.' It is deprived 3. On account of which reason, among others more potent to me, they hand it over to Lago; and Saturday, that precept of charity does not obligate one to prefer goods according to the order of proximity, unless (as we have said above) the proximate person is in extreme necessity; but not when he himself voluntarily exposes himself to the loss of death: And thus completely is elided the reason of the adversaries; for otherwise even the habit would be justified in killing an unjust invader of life, which all laws proclaim: To the text however in c. Susceptimus, the opposite as mentioned above, rightly corresponds Satm. de V. praecept. c. 4. punct. 4. §. 4. n. 84: ibn nêlêpô Uamniato's fuisse religiosos, quia res non erat tanti nomenêti; nec timor

mortis inferendae à latronibus, ibi jam vinctis, qui à vinctibus sê solvere nitebantur, potuit occidentem excusare, cum interim bene valebat lugere, êt à periculo se liberare.

Here we say according to U: 1: 3: 6 and Satm. ibid.: n. 88 with Bonac. 'Pradô, et alis communiter, licêre fidrem eminus telo côcidere, si hse fera aspôrtet, et praemonitus de suo periculo, eam nolit dimitterê, ut bene explicât Bonac. p: 10. n. 2. "Question 2."

What quantity of value must a thing have, so that it may be permissible to kill a thief? It is certain that two things are required for killing a thief: first, that another way cannot obtain the recovery of the thing; secondly, that the thing be of great moment, which certainly is not the value of one aureus, as is contained in the aforementioned proposition condemned 34. Unless in some rare case where such a theft brings about great damage, it is thought (as stated at n. 10, no. 47) that if an artisan's tool of similar value is stolen, which upon being removed he himself cannot sustain his own life and livelihood.

Hence, generally speaking, they say e and n 65 that that would be a great sum which, when taken away, would impair sustenance for oneself and for one's dependents; and the same Natal de V. proc. art. 2. prop. 6. n. 87 holds. Verà et Vasq ac Mol apud Lug d. 10. n. 478 add that such a loss would suffice, which would bring notable damage to the lord, according to the quality of the person; for as it is well said in proc. cap. 3. Question 5, the theft of ten gold coins may be serious damage to one person, but to another opulent it could be light. However, Carden. in 2. Crisi, in the decree of the twenty-fourth day, number eighty-eight, considers that, with respect to any sum, four hundred argentea (among us being equivalent to forty ducats) is a great sum.

And regularly rightly they say that the sentence of Sotius and Arag. should be followed, to which they consent and rightly reject what is apposite. Neither do Lugo n. 478 and Salmant. ibid. n. 86 fail to observe well that at the time of Sot, five gold coins, or more ducats valued then, were worth less than ten now, because the course of time has increased the supply of money and diminished the value of things. An vero liceret occidere furem auferre rem modici valoris cum resistentia domini aut custodis illius?

They affirm article 3, n. 4, and it seems that they adhere to Lugo, decree 10, n. 478, chapter 2, n. 457, and chapter . n. 40 and chapter (provided, as these two say, that the resister be a noble man), because then honor itself is also taken away from that thing. This judgment is not condemned in c.

4, §. 2, n. 3. But much more to me the opposite sentiment seems agreeable than they hold in n. 85 and tr. 4 r. 48, not admitting that.

Reason: although such an ablation may be made with a special injury to the lord on account of violence, nevertheless, since not every injury brings dishonor, this seems to me not properly or gravely to injure the honor according to human estimation; for who will esteem one as greatly dishonored because a thief violently carried off some thing from him? It is asked whether it is permissible for you to kill a thief, if he has put the thing stolen, which still remains, in safety, and you wish to recover it? They and others deny it who consider this north to be a probable hypothesis.

Reason, because in that case the thief is not an invader, but merely an unjust holder of the thing taken, and therefore it is not permissible to kill him, but only to accuse him before a judge; otherwise great disorder would ensue for the republic. But the opinion asserting that in the case where there is no hope of recovering the thing by some other means seems to me more probable. Reason, because then he is a robber, although he is not an intruder of the person, yet still he is an intruder of the thing, when he contends with you to have your thing restored to him.

Thus. 2. c. 9. dub. 14. n. 75. Lugo, Decretum, Distinction 40, Section 9, Note 484, and Diana, Appendix. Salmant. ibid. n. 94. cum v. 7. 384. — Whether it is permissible for clerics and religious also to kill an unjust aggressor of their great goods?

They affirm more probably with Bus. Lugo d. 10. n. 475. et n. 84. cum Ratio, quia jus defensionis est de lege naturali, et ideò unicuique competit. Now however, would they incur irregularity in this case?

See on irregularities where the negative judgment is proven. 385. — Question 5: Whether it is permissible for someone to defend himself with arms even against infamous individuals? They probably affirm and 66. when . ibidem . to each one it is permitted on the reasoning of charity to repel another by force, unjustly approaching to plunder the house of his neighbor: and they probably consent and §5 n404 with others commonly: just as it is also said for defense of honor, and of modesty. See n. 392. 386. — Question 6. an liceat occidere invasorem pro pudicitiae?

If it is permissible to do this in order to defend honor and faculties, much more so should it be allowed for the defense of chastity; since another remedy does not suffice. Thus D. t. 5. c. 6. in fin., where it is said: And if it

is permitted not only to defend oneself but also one's goods, why should it not be permitted to defend one's chastity as well? And therefore he says, do not sin, O virgin, if by force you repel force, and the aggressor you kill.

Thus, the Archbishop elsewhere speaks (p. 2, title 7, chapter 8, and p. 3, title 4, chapter 3, § 2): Because a woman is protected by her natural right, which allows one to repel force with force, and she is more bound to provide for her own salvation than for the safety of another; for she exposes herself to the danger of consenting to an act of sin by allowing herself to be oppressed, on account of the difficulty of pleasure. The same is taught by P. Cunhiati de V. in the aforementioned work, chapter 2, section 3. Lugo tome 1. discussion 10. section 10. note 195.

Mol. d. 47. n. 40. et 44. . 2. c. 9. dub. 12. Anacl. de quinto praecipue quarto quæstio secunda numerus quadraginta novem in quinto praecipue caput duo punctum quartum sectionem tres numerus setcentos undeginta cum Bonaventura et aliis communiter. And this they rightly observe in note 496 and regulation 5 concerning practice, that not only will it be permissible for a girl when another person violently touches her act, but also immediately thereafter, to strike with wings, fists, stick, and even with non-dangerous blows.

Reason, because unless in such a manner it itself shows its constancy and displeasure, he will not easily depart. Hence always and this must not be done for vengeance; it is not only permitted, but also advisable to consider the matter for the woman's sake, so that at least the other may recover his senses, and in turn she herself not be provoked. 387. — « 8. It is also permissible to kill him, insofar as it is certain that he sets traps for death, so that if his wife, for example, knows that she will be killed by her husband at night, and cannot escape, it is permissible to anticipate him.

The question, however, is whether it is permissible to pre-empt the aggressor: The first opinion denies this with Sylvius, § 2, n. 54, because to pre-empt an enemy merely prepared to attack would not be true defense. Nevertheless, the second opinion affirms with Lugo, etc., ibid. n. 55. because these say that for defense against an invader, it is not necessary that another has already begun to injure; but it suffices that he be prepared to injure. However, in chapter 6, canon 4, section 2, note 45, and question 2, and notes 56, 57, and 58 with Sot.

Azor, Cov.: Si quis ex aliqua actione noverit inimicum esse determinatum ad invadendum, putà, si certò moraliter sciat illum jam ad hoc parasse arma, vel mandatum dedisse servo; tunc, si aliter effugere nequit, licitè

potest eum prævenire: aliàs ridiculum esset (ait . c.) eum velle cogere ad expoetandam aggressionem, quando justè timeret, se non posse amplius eam repellere. But if he does not know certainly, but only has suspicion or a doubtful fear of invasion; it is impious to deprive one's neighbor of life on account of doubt. Nevertheless, I hold that even with this second opinion and this supposition made, it is hard to find anyone who can follow in practice, on account of the danger of hallucination which may be present in such matters. 388. — « 9.

Hence also some say, as in moral theology chapter twenty-nine and others, that it is permissible to kill him who at the judgment acts with false accusation or by testimony, etc., from which it certainly comes to you, that you are to be killed, or mutilated, or even (which others find more difficult to concede) deprived of your temporal goods, honor, etc., because this is not an invasion, but a just defense: assuming that the injury of another is certain and there is no other way of escape. See Exempla example 7 chapter 8. Hurt.

Lugo doubtful 40. section 7. tome 7. reason 52. However, the aforementioned opinion of Sanz was explicitly condemned in proposition 48 and proscribed by . It is permissible to kill a false accuser, false witnesses, and even a judge from whom an unjust sentence is imminent, if one cannot otherwise avoid harm to the innocent.) 389. — « 10.

Whenever anyone according to what has been said above possesses the right to kill another, another can also provide for it on his account, when charity advises this. d. 3. q. 4. Mol. d. 18. An article, and when is it held to this?

See Lessius 1. 2. c. 9. d. 43. 1. t. 4. res. 6. 14. 20. Therefore, it must be said I. It is permissible to defend one's life against an unjust invader who attacks with deadly force.

Therefore, according to Decretals, preceding article 3, section 2, question 3, with common Decrees and Saint Thomas Aquinas, II-II, question 60, article 6, ad 2, where it is said: It may be said that Moses slew Egypt, defending him who was suffering injury, with moderation in accordance with fitting protection. Wherefore Ambrose says in book 4 of [De] quod: He who does not repel an injury from his associate when he can, is just as much in vice as he who commits it; and he brings forward the example of Moses. And this is why, even though one may wish to give oneself over to be killed for an innocent proximate person, since he himself is not the master of his own life: and therefore it would be wrong to deprive others

of the right to defense. 2 c. 9. num. 87.

Lugo tr. 25. de homicidio c. 4. punct. 3. §. 5. n. 94. But you will say: If invaded, yield to his right; how then can you defend his right when faced with the aggressor's death? I respond: That person invaded has two (so to speak) juridical rights proximately: one concerning his life, another concerning that which is to be defended; he cannot yield to the right concerning life, since he does not possess dominion over it; hence he could never induce the other party to kill himself, and although he might permit himself to be killed, the slayer would always sin against justice.

The justice of defending, however, he can yield his own life by permitting another to kill him, according to what is stated in number 380. Hence, when you kill the aggressor who is innocent, you do not defend the right which belongs to him for his own defense, to which he himself has already ceased; but you defend the right which belongs to life, to which he cannot possibly yield. [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions]

[TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] Reason 2. Because in murder, a great inconvenience can never be avoided by another through fear of enemies' rumors, public justice, etc. Rather, who would not say that horror brings great harm to human blood, which the precept of charity is not considered as obliging?

Receive the case, wherein a person is necessary to be involved for the sake of public good. Sporer, loc. cit., n. 470, also takes up this point, asserting that if a parent, child, wife, or brother is invaded, then pietas obligates one to protect them. Correctly also it receives the point 1.

You will collect 2, with Ragnaudo, that if it is to be killed, it is an abomination, and because it is truly in the state of mortal sin, since this is truly in extreme necessity of the soul. 391. — It must be said II. It is lawful to kill equally the invader of one's chastity or honor, if the invasion be committed by deed, namely by striking, etc. Otherwise, if it be done merely by words (as was said above in number 381). Thus Lugo disp. 10. sect. 11. n. 203. d. 13. and Saltm. ibid. n. 96. with Bon. etc., against those who deny that it is lawful to do so except when the person affected by contumely is connected, as was said above, or a prince, or a lord. When however a woman consents, or at least, if she positively does not resist, it

is not licit to kill her invader of chastity, because then it would not be permissible to repel force by force. . n. 97.

If however a woman is very closely related to you by consanguinity, they say that you could even kill her partner in copulation consenting thereto, if otherwise you cannot avoid your own infamy. These things, however, are to be understood before the act, for certainly it is not permissible to kill either in the very act itself or afterwards, as is evident from proposition 49, decree of . which says: "A husband does not commit sin by killing his wife with his own authority when she has been found in adultery." They also note that according to 2. c. 9. art. 88 and Salamanicensis dict. n. 97 it does not follow therefore that a man may kill his wife if she boldly desires to be adulterated, because the husband can avenge injury upon her by other means, such as striking her with a stick or deterring the adulterer through threats.

Here note this, which is found in c. Si verò 3. de sententia excommunicationis; where it is defined that, striking a clergyman acting turpiter with a stick against his mother, daughter, son, and wife, one is immune from excommunication but not from guilt. III. Debebimus defendere etiam bonam ex charitate probare, cum possumus commode aut cum levius nostra jactura; qui vero cum graviter: Bon. ibi. 402. If we spend something for the defense of goods to some extent, we can also secretly compensate for it.

DD. id. After which it is inquired whether one who wishes to defend the goods of others of great moment can also decide to punish a thief, if need be? DD. who deny this on account of defending their own goods, all the more deny it on account of defending other people's goods, as is stated at ibid. § 4, n. 79 and 80, and § 5, n. 403.

They say: The charter binds more to the preservation of one's life than to good letters; but the contrary holds true according to S. Antoninus 3, p., tit. 4, c. 3, § 45, c. 9, dub. 43, n. 88: Lugo d. 40, sect. 44, n. 202, et Bon. cum. n. 404. Reason, because we ought to prefer the life of our neighbor to the goods of another when he is in involuntary necessity; but not when he has placed himself in necessity of his own accord, as we have repeatedly stated in the present doubt. But it is permissible to expel the fact for the sake of the mother's life, see what is to be said in the subsequent dubium seq. n. 394.

What. I. and II. DOUBT.

IV. Is it permissible to kill an innocent at some time? 398. Is it ever permissible to procure an abortion?

Yes. I. May it be permitted to a mother to take a medicine directly aimed at causing the expulsion of an inanimate object?

Whether it is permissible for a woman who is heavily oppressed to immediately expel the seed of the assailant? Qu. II.

Is it permitted to a mother to use a magical charm directly for the expulsion of disease, with danger entailing an abortion before the act? Qu. III.

When is a greatly informed soul considered? 395. Qu. IV.

To whom are penises subjected in order to procure an abortion? Which. To whom the penis is subjected in order to procure an abortion?

An inourrant 396. What. Sixth.

Do those who procure an abortion incur irregularity when it is doubtful regarding animation? 397. Qu. VII.

Who can remit penalties for an abortion of an unfertilized ovum? 398. When is one moved to commit a casual homicide through cruelty? Un adulter, qui occidens maritum suae adulterae aggressorem, incurrit irregularitatem?

And whether he incurs guilt if, himself foreseeing it, he is killed in the very adultery? 393. R. 393. R. 393.

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Where resolved: "U: If a tyrant threatens the city with destruction, unless an innocent is killed, that is not allowed directly. Neither is it permissible as a limb may be amputated for the health of the body, so also a citizen for the state; because man is merely a moral part of the state, from which he derives his being and life, just as a limb derives its being and life from the body. c. 3, d. 10, Th. 2, 2, q. 64, art. 6, punct. 4, § 4, n. 52.) « 2. The republic, however, in that case can so constrain such a one, that he go to the tyrant, and if he refuses, deliver him up: when from charity and justice it is bound to expose its life for the sake of the republic.

Wherefore, if it renounces this, a process ensues; and this will not be cooperating in its death, but merely permitting it, since tradition concerning itself is indifferent, and death will follow only indirectly and apart from the intention of the republic. Mol. l. c. . 2. c. 9. d. 7. 10. 38. They say, translated version 29, number 11, ibid., note 57, that it is not possible to deliver him involuntarily, because cooperation would be provided for his death, which is intrinsically, not extrinsically.

But the first opinion seems more probable according to Lugo, d. 10, 13, and Fill., namely: if therefore he is bound to deliver himself up, well; it can be reaped when he delivers himself up, if he himself culpably refuses; for then he is no longer either harmful or criminal, as the Decretum prologue art. 2 sect. 4, quorum 5, with Sylvio, 10 de qua, says: "if an innocent subject or foreigner be held to die for the sake of some republic:" 3. If you cannot escape death pursued by an enemy except through a narrow path, whereby anyone sitting here would be obstructed, it is permissible, nevertheless (provided always that if the infant is able to be baptized, he is baptized, 6). Lugo, et Escob. e. 7. c. 8.) to flee with his peril and destruction, apart from your intention.

(punctuatio quarta sectionis secunda numerus sextus quadraginta quarti in medio cum Prado, . « 4. Similarly, in order to assault the city and achieve victory over Teopontandam, if it be necessary, one may direct torments to that place where many are gathered; innocents: because the death of these follows without regard to their intention. . 10. » 5.

It is not lawful to slay hostages, even though those who sent them did not act with faith; because they are innocent. d. 2. q. ult. sect. 4. alio. You ask, when it is permissible to procure an abortion indirectly, and whether it suffices? If however the fetus is animated, and both it and its mother are judged to be moribund with the child, unless medicine be taken; it is lawful to take that medicine according to some, intending directly one's own health even though indirectly, and consequently the fetus is destroyed: because in such necessity the mother can look more to herself

than to her child.

If however at the mother's death, the hope of life and baptism for the child shine forth, then it is asked I. Is it licit for a woman who is constituted to take medicine in extreme illness to use it directly to expel an unborn fetus? It is certain that to expel a fetus, even though it is inanimate, per se constitutes a mortal sin, and the one who expels it is held responsible for homicide, as stated in c. Si aliquis, de homicidio; because although life from a human being is not taken away, nevertheless proximately the life of a human being is hindered.

Against this, it is certain that among all, it is permitted to provide a remedy to the pregnant woman directly for her cure, even with the risk of inducing an abortion, if the disease is mortal; otherwise, if not such, as correctly pointed out in the preceding section 4, rule 2. A doubt arises whether then it is permissible to give her a medicine directly to the fetus. The first opinion affirms this, and the gravest doctors maintain it, according to L. 9, d. 20, n. 9, 3, tr. 3, p. 3, c. 4, n. 4, with Sylv. l. 4, c. 3, q. 1, 34. Innoc.

Eleventh note number forty-one page four hundred and seventy. Haberct t. 7. p. 749. and others. The reason is, firstly because, since that fetus is a part of the viscera, the mother is not bound to preserve it with such risk to her own life; secondly, because in this case she can expel it as an aggressor against her own life; although the fetus is not a voluntary aggressor, nevertheless the mother is not bound to neglect her present life for the sake of preserving the future life of the offspring; especially since, when the mother dies, the fetus will be animated very little.

This opinion is supported by D. 7. c. 2, § 2, where it states: "Si autem puerperium nondum est animatum, posset tunc et deberet (medicus) talem dare medicinam, quia licet impediret animationem talis fœtus, non tamen esset causa mortis alicujus hominis: et hoc bonum sequitur, quia liberat matrem à morte." However rightly it is objected (and this he asserts as being commonly held by all against a few), if there be any doubt whether the fetus is or is not animated, because then an intrinsic evil exists in exposing innocently to a positive risk of death one who is without fault. The second opinion is more commonly taught, allowing indeed the mother to take medicine directly for her own cure, even though the fetus may indirectly suffer; but not directly for expelling the fetus.

Thus. 2. c 9 n. 61. Lugo concerning justice, decree 40, number 131. Pont. de matr. l. 40. c. 13. n. 2. tr. 29. c. 6. n. 140.

Cabass. l. 5. c. 20. n. 8. 1. et 3. . c. 4. n. 704. Innoc. XI. n. 28. 2. p. 7. n. 3. punct. 4. §. 2. n. 62.

Cross L. 3. p. 1. n. 825. proc. c. 1. n. 579. Elb. de matr. n. 464. and many others besides. Reason, because if it was never permissible to expel semen, even though its abundance causes fear of death, all the more will it be impermissible to expel the fetus, who is nearer to human life.

It is not valid to say that the foetus is an inanimate part of the mother; for it is replied that the foetus does not pertain to the integrity of the maternal body, but is constituted as a beginning individual human being. Receive this, as they well observe, c. n. 706, and c. si foetus esset corruptus; quia tunc non est jam foetus, sed massa putrida, quae amplius non est capax animationis. Both opinions are plausible; but I deem the second one, as being more cautious, absolutely to be embraced in our case, since the first can in no way serve the practice, and it seems vainly that doctors sweat over it; what is the point (as well he says P. Busemb.) of wishing to take a drug directly to expel the fetus when it can and suffices to be expelled indirectly?

In two only cases could the first opinion be deduced in practice; the first case would be if the mother had experienced danger of death through parturition: yet on this account it is not permitted to expel the foetus as commonly they teach, c. n. 10. To Peter. Question. Chapter 1. Quære 2. Against some. Reason, because in that case the fetus is not the present aggressor when the danger is distant, and the mother might die from some other cause.

This is confirmed by another common doctrine which St. Thomas teaches in II Sent., dist. 22, qu. 2, namely, that it is never licit for a mother to take any medicine on account of any danger in order to prevent conception. The second case could arise when the mother, unless she expelled the foetus, would either incur the danger of being put to death by her relations, or suffer harm to her reputation; but this is certainly illicit according to proposition 34. Innoc.

XI. quae dicebat: Licet procurare abortum ante animationem foetus, ne puella deprehensa gravida occidatur, aut infantemur. Reason, because it is one thing for the foetus to be an aggressor by itself and intrinsically; it is another thing for it to be an aggressor by accident and extrinsically: for anyone can kill an aggressor that he himself might not be killed; yet it is not right to kill another in order not to be killed by the enemy. They

indeed say in lib. 2, d. 22, n. 17, and prop. 34, n. 17, that a woman, being forcibly oppressed by a man, could incontinently expel the received seed, as an aggressor of her honor, to avoid infamy; likewise as it is lawful for a nobleman to kill an invader, to act volitionally and strike him with a club (as we said supra n. 384), although this does not make contact follow after striking.

But I cannot assent to this opinion: for if a woman could then expel the seed as an aggressor of her honor, she could also do so afterwards; which the aforementioned authorities do not concede. Nor is it valid to say "cum"; for, as the Pontifical on Matrimony teaches in 1.40, c. 43, a. 4, immediately when the man emits semen, the woman's womb receives it and is closed up. And this cannot be denied by him [i.e., the authority being cited], cap. 15, punct. 6, n. 75, cap. 2, n. 493, and others similarly (see de matr. 1. 6, n. 947), who say that a wife does not commit mortal sin when she yields to her husband, for she is thereby fulfilling her debt; hence, because the woman's womb closes immediately upon receiving the seed; otherwise, it would be poured out at once and frustrated, which without doubt would be a grave sin; from this they rightly conclude n. 75 that the wife would not have sinned if, after receiving the seed, she had promptly risen up for some just cause, unless she did so with an evil intention to scatter it, as also stated in cap. 9, dec. 20, n. 3.

We readily admit what . 2. d. 22. n. 47. says, namely, that a woman oppressed by force lawfully may turn herself and interrupt coitus, even though the man's seed would be about to be discharged; because this happens accidentally and solely on account of the violence of the man. Whence Croix rightly concludes 1. 3. p. 4. n. 824 with Carden., that indeed it is lawful for a woman forcibly invaded to repel the seed, so that it may not be inserted; but not to effectuate if it has already been introduced. See what is said concerning the matter in Matr. 1. 6. a. 954. v.

Dib. 4. Question. Second.

May it be permitted to a mother to take medicine directly for the purpose of expelling a disease, if thereby there is feared an indirect abortion of a living fetus? Response: Si remedium directè tendat ad occisionem foetūs, ut esset dilaceratio uterī, percussio ventris, etc., hæc quidem numquam licent. If, however, it tends directly to preserve the life of the mother, such as would be a purgation of the body, a venesection, a bath, etc., these certainly are licit when otherwise certainly the mother with her offspring would perish.

Thus Habert t. 7. p. 748. and Decretals prae. art. 3. sect. 4. r. 4. with common consent. But there is a question, whether it is permissible for the mother to take medicine when there is doubt whether the dying mother's child might survive and be baptized. They affirm Holzrn. de 5. prae. c. 4. n. 79. punct. 4. §. 2. n. 66. with Prado; because (as they say), being obligated to endure death in order to procure the life of another in the last necessity, then only is it present when it is certain that the loss of the temporal life is absolutely necessary for the spiritual life of another (as the cited Doctors and others add); but not when the spiritual salvation of the neighbor is uncertain, as in our case where there can be many doubts about it.

And to this opinion seem to have favored lib. 9, d. 20, n. 47, and prae. c. 2, q. 3, saying that then only is it illicit to take a remedy at risk to the life of the child when it is certain, or at least more probable, that a live child can be fed. But I am unable to acquiesce in this opinion; for just as when the death of the offspring is certain, and if the mother takes medicine she will die, while if she abstains from medicine the death of the mother is certain, then according to the order of charity the mother is bound either to abstain from medicine and prefer her own bodily life to the spiritual life of the offspring; so also, when there is doubt about the salvation of both the mother and the offspring, out of the same charity she is bound to abstain, unless the danger of abortion be equal whether medicine is taken or not, since then it is justly considered with regard to the greater peril without more that the life of the mother is consulted. Et etiamsi certa esset mors matris, si non sumat remedium, nec tunc auderem permittere ei medicinam, si aliqua rationabilis spes affulgeret, quod mortua matre proles superviveret et baptizari posset: quia nemini licet positivè exponere proximum in necessitate constitutum periculo mortis aeternae ad tuendam suam vitam temporalis.

But I think it should be said according to 4. tr. 2. c. 3. q. 2. et c. r. 3. with Sylvius, that then charity does not seem to oblige the mother placed in extreme necessity to neglect her own life by abstaining from remedies out of a very small and most remote hope for the life of the offspring. Hence they reasonably say that physicians in this case, so far as drugs to be provided to mothers are concerned, should not be scrupulously avoided, because what they themselves say is most probable, namely, that it is. Lugo dicit 40. num. 435. rarissimum esse casum, et moraliter impossibilem ut penè miraculum sit, quod pereunte matre proles supervivat ut baptismum recipere possit.

Those things they confirmed to me many physicians of medicine, whom I consulted; because in a mother laboring under a lethally ill disease, the

humors are corrupted and infect the fetus with its aliment (4). But is the mother bound to suffer an abdominal injury so that the child may be baptized? See [the text] mentioned at l. 6. n. 406. v. Omnino.

Question. III. When is it deemed that the soul of a fetus is infused?

Proposition 35 was condemned by Innocent. XI. quae dicebat: Videtur probabile, omnem fctum, quamdiu in utero est, carere anima rationali, et tunc pri- mum incipere eamdem habere, cum paritur; ac consequenter in nullo abortu homicidium committi. On the contrary, some have wrongly said, in Article 8, Note 26.

S. Alphonsus adds: "Tamen accidit nonnulli, qui mihi testatur, quod propter peritiam chirurgorum statim mater spiritum exhalarit, et in utero italico matris proles viva extracta et baptizata fuerit." It is now evident that a great number of infants happily survive after the cessation of maternal section and are brought to baptism post mortem. Likewise, it is evident that the animation of the offspring occurs much sooner, within forty or eighty days; some more recent doctors say that the fetus is animated either immediately upon conception or in its first few days of gestation. For it is said by the fate itself which is being torn apart that it is animated, because the fetus certainly is not animated before it is formed; as is gathered from Sacred Scripture, Genesis 21:22, where according to version 70 it says: He who has struck many pregnant women and caused an abortion, if the fetus was already formed, he will doubt about giving a soul for a soul, but if it was not yet formed. It is certain that a fetus does not immediately animate itself: hence, according to Hippocrates, a male animates itself on the sixth day after conception, approximately forty or forty-five days; a female does so on the thirty-fifth or fortieth or forty-fifth or even fiftieth day.

And the same is found in Lugo, d. 40, n. 433, et de restitut. d. 2, p. 4, §. 2, n. 59. However Bus., as above, art. 904. And it is testified by St. Thomas in the Eighth Part, Third Question, Fifth Article, Second Reply: "Marine congestion is not perfected unless until the fortieth day, as the Philosopher said in the Fourth Book on Animals: 'The gestation of a female cat lasts up to ninety days.'"

But in composition bene, it seems to Augustine that six days should be added to the body of the male. But it is more to be adhered to according to the Gloss and theologians, who almost all (as he says) think, that males are married on the fortieth day, and females on the eightieth: and this opinion follows the sacred Penitentiary: when speaking of irregularity and placing,

as in 2. q. 64. art. 7. p. 449. at the end. 395. 4. Quaer.

IV. To whom the penalties are subjected by those who procure an abortion, Sixtus K. in the year 1568 issued a bull which begins: Effrenatam. In that Bull, the Pontiff subjected to all those who knowingly procure an abortion, whether of a living or dead foetus, and in any way consenting thereto, or providing women with poisons, sterility ointments; these should be punished by penalties due to murderers according to both civil law and canon law, such as deprivation of every clerical privilege, dignity, or ecclesiastical benefit; moreover, incapacitation from obtaining such. Furthermore, he imposed irregularity and excommunication ipso facto (following the effect), the dispensation and absolution of which were reserved to the Roman Pontiff.

However, Gregory XIV., in the bull Sades Apostolica, issued in the year 1594, removed irregularity and excommunication for an abortive act; but he left both irregularity and excommunication reserved to the Pope for a deliberate abortion of a living being; nevertheless, as regards excommunication, he conceded the faculty of absolving therefrom both to Bishops and others, especially those specially appointed for such cases (Monks also have this faculty of absolving in such cases; see 1. 7. n. 99.). When Sixtus imposed excommunication only upon those who deliberately procure an abortion, he excuses even gross ignorance thereof, as commonly teach the Doctors, according to 1. 9. d. 32., and others, as will be said in 1. 7. n. 47. An autem excusat ignorantia affectata? See ibid. n. 48.

And the same seems to be said, provided that it is about the irregularity imposed there, according to the probable opinion which will be adduced in the same book 7, chapter 354....Quær: V. Concerning a woman who is pregnant and incurs excommunication, what if she procures an abortion?... The first opinion of the commission affirms this with . 84. In noe.

XI. n. 48. 2. q. ult. sect. 4. p. 7. n. 6. qui dives est, hanc esse usui receptam, et Sporer de matr. c. 4. n. 748. cum rationes sententiae hujus mox referantur in expositione secundae sententiae subsequentis. The second opinion is very probable, and, considering its intrinsic reason, more probable, denying with Avila de censur. p. 2. c. 5. d. 3. dub. 12. Lezana t. 3. v.

Abortion, n. 41, punct. 4, §. 3, n. 70, cum Naldo et Alph: de Leone; eamdemque tenet Lugo Resp. Moral. dub. 4. n. 4. (he nevertheless says that it is commonly useful to stand thus, if he has otherwise explained the

bull), and he calls it not improbable; rather, it is treated in Ronel de 5. prae. c. 2. qu. 6. The entire resolution of this doubt depends on the words of the bull Effractuam in the preceding question.

IV. Enunciata sitii V., in qua praedicta excommunicatione infracta est contra procurantes abortum. The adversaries DD. say that in the humiliation of the aforementioned excommunication, pregnant women are also included, because it is stated in § 4 of the bull: And even pregnant women themselves, who have knowingly committed such acts. Item in section 5.

The Pontiff speaking about poisoned potions states: Ao women themselves, who have spontaneously and knowingly drunk the same cup. But it is replied: In both paragraphs, the Pontiff plainly speaks (as I diligently observed in the bull) only of temporal penalties against murderers; for when he later wished to proceed to spiritual penalties, especially to inflict the aforementioned excommunication, as stated in §7, he thus subjoins: Furthermore, that we may anticipate and consider the immeasurable gravity of this crime not only with temporal but also with spiritual penalties, let all and each, of whatever rank, status, etc., who knowingly give aid, counsel, favor, poison, or other medicines to commit such a deed, be warned; etc. Speaking thus about spiritual penalties, the Pontiff does not mention pregnant women, but only those who knowingly provide aid, counsel, etc., to others in this matter. The adversaries press the point and say: At least pregnant women should be included here in §7, where it is said: Who or which act as principals or as accomplices to commit such a deed, etc. But again it is replied that by the term "principals" are not meant the pregnant women themselves, but the principal co-conspirators who provide aid, counsel, or medicines, in order to distinguish those who contribute indirectly to an abortion. And truly pregnant women cannot be understood in any way here, for otherwise the Pontiff would not have said, "Who or which, as principals, or as accomplices to commit such a deed," etc.: How indeed can men take medicine to procure an abortion of women?

Autem rationem, aliquam. It is presumed that the Pope has excommunicated those who are pregnant by this excommunication, Lugo and others, as stated in n. 71 above, because perhaps they were moved by the weakness of their forms; for while being impelled by a strong fear of harm to use these medicines, they stumbled upon them, and since they did not abhor such an offense, they easily overlooked the excommunication as well; and thus, the Pontiff, in order to avoid a new snare for souls and other dangers, especially sacrilegious confession, did not wish to include them. Salem says: when there is doubt whether this excommunication has

been promulgated, he also adds that it is very probable that those who are pregnant are excused from it according to what we learn in I. 7 de canur. et 67..... 399—Quaer.

VI. An procurantes abortum incurramus in irregularitatem, dubium est an fructus sit vel non animatus?... Prima sententia affirmat quam tenent c. 7. punct. 3: num. i 45. at de rest. c. 2. punct. 4. §. 2. n. 59. . 34. dabo: ab Innoc. XI. n. 18. when . 119. Reasoning, because in every homicide a doubt incurs irregularity, it is readily taken from C. Ad audientiam, de homic., and C. Significasti, an. 2.

Petition, in the same title; because in a doubt the foetus is presumed male, they say that one who procures an abortion after forty days should be considered irregular; thus do Fill and others according to the aforementioned cite it as judged in external forum, and so also preserved in the Holy Penitentiary..... However, the second opinion holds this to be more correct, and maintains it according to 10, ius, 3. §. 6. v. Irregularity, and concerning censure. i. 10. c. 5. n. 48. with Proposi and Gibalin. also Moya tract. 5. q. 6. with Pell. March.

Leand. and Herdej: loc. cit., cum; ot idem sancti doctus Auctor: neotericus libelli, cui titulus: Instrux. per li nul- leiu a. 18. n. 464. et 465. The convincing reason is irregularity: it does not arise unless it be expressed in law, as stated in c. Is qui, lecunt, ecc., in 6. (Vide dicenda i. 7. n. 345.). In this case, however, irregularity is nowhere expressed; for although irregularities were previously found in the aforementioned texts concerning certain matters about which there was doubt as to whether they themselves would be considered such or not, due to the cause of homicide; yet certainly a homicide had been committed. In nostro casu autem, cum dubia sit animatio foetus, dubia quoque est patratio homicidii; hic autem casus nullibi quidem expressus est in jure; ideo procurans abortum non habet irregularis.

What would one say differently, if it were doubtful; whether someone has certainly cooperated with his counsel or work towards the certain death of a foetus already certainly animated? See [the text] 16, 10, 314; Nulla autem praesumptione esse potest (ut sine fundamento asseriat; imo potius praesumiri possit fœcundia est, quia ex frequentiori eventu, ut audivi; amplior est numerus feminarum quam masculorum; saltem de hoc utrimque aeque dubium est. He adds, not improbably, O. in Decretals: that possession in this case is reckoned according to the prior state; for the foetus was first unanimated, then animated.

Herefore it is very probable, from the aforesaid above in the question. III, non censendum irregularem, saltem in foro interno, qui intra octoginta dies a conceptione abortum procuravit. Now concerning the irregularity mentioned here, it must also be said regarding excommunication, according to what is stated in 1. 7. n. 67, and similarly about other matters, as well Eblel says in 1. c. 397 — Question None

VII. Who will vouch for the penalties mentioned in connection with abortion to be inflicted? Regarding excommunication for abortion of an animated fetus, we have already stated in the bull that only bishops and others specially designated by them can absolve from it.

But a doubt arises: whether those confessors who have a general faculty from the Ordinary to absolve from all cases reserved by him himself can absolve? They deny point 4. section 3 number 67. Diana part. 7. tr. 5. r. 15. et 49. . praec. c. 2. q. 5. r. 4. et alii dicentes requiri deputatio nem specificam ad hunc casum abortus.

They argue that from the words of the aforementioned decree of the bull of the 3rd year, part 2, title 2, question 2, paragraph p, number 40, note 15, where it is stated: "Each presbyter, whether secular or of any religious order, appointed by the local Ordinary to hear the confessions of Christ's faithful and especially for these cases, has the full and free faculty in the forum of conscience only to absolve." But very probable, they both affirm to be able to absolve in the same manner Bon. 1. e. n. 16. and q. 7. d. 4. n. 7. and adheres Eblel de matr. n. 471. and Sporer de matr. c. 4. n. 720 considers it not improbable. Reason, because those words, ad hos casus specialiter deputatus, do not refer to the case of abortion, but to the confessor; so that no one whatsoever can confess this case (as some falsely supposed).

(Dianam.), sed bene potest istum quem Episcopus specialiter deputat ad absolvendum fidelis ab his casibus vel speciatim exprimendo casum abortus vel generatim concedendo facultatem absolvendi ab omnibus casibus sibi reservatis. And rightly say Bonaventure and . Likewise, moreover, Eblel d. n. 474 says very probingly that all major prelates of regular orders, who enjoy jurisdiction quasi-episcopal, can also be absolved from this excommunication; but only their subordinates, for whom they can also appoint others.

Moreover, they add 6. c. 43. punct. 3. n. 52. in fin. with Peyrin and Pell. p. 4. n. 724. and Eblel ibidem (who asserts that this is sufficiently commonly agreed upon by the Doctors of the Church), that the faculty to absolve all

mendicant confessors from internal forum should competently belong to them all through this excommunication; because although the Pontiff denied this faculty to confessors not specially delegated by the Bishop, he is not considered as having wished to deny it to privileged confessors, to whom elsewhere was granted the faculty for cases reserved to the Pope. Moreover, after proposition 42, condemned by Alexander VII, it should be certain (as the same [authors] also state in article 1 and Cabass). T. J. 1. 4. c. 44. 4. 5.) quod si alicubi Episcopus sibi reservavit casum abortus vel homicidii voluntarii nullus regularis poterit ab eo absolvere sine Episcopi licentia.

See what is said [or stated] 1. 7. n. 99. at the end. That which pertains to irregularity, speaking per se, can alone be dispensed by the Pope, and not by the bishops, even if the abortion had been hidden; because voluntary homicide is expressly excepted in the faculty granted to them by Tridentine in cap. Liceat 6, sess. 24. But as regards other penalties inflicted in the Bull of Sixtus, namely privation of benefits and incapacitation therefor, a sentence condemnatory or at least declaratory of guilt is required, since it is a deprivation of acquired right, as we said in 1. 4. n. 148, and as this text also states at 478.

As regards the incapability, we say that it is incurred before any sentence, according to what has been said in the same note 148, and as we shall more fully explain in 1. 6. n. 705 (whatever Sporer may say about matr. c. 4. n. 722 and cited works); because incapability does not deprive one of acquired right, but through acquisition. But whether bishops can dispense in this incapacitation? They concede . n. 642 and from the Matrimony n. 674 and c. 4 n. 722, and justly Roncagl. de 5. praec. c. 2 q. 6 (contra Anacl.). The reason is that in all penalties, by virtue of a general reservation left to the Pope, bishops can dispense; hence, speaking generally, they commonly teach among the people.

This is gathered from c. Nuper 29 de sent. excomm., where, in the discourse concerning excommunication, it is said: "For although the Founder of the canon did not specially withhold His absolution, thereby it seems to have conceded the faculty to others of remitting." And ibidem subjoins the Glossa: And this is the argument why Bishops can dispense where special dispensation is not inhibited, and it seems to have been conceded what is not prohibited. See the dictionary 1. 4. n. 494, and see moreover what is said 1. 6. n. 980, 398. Finally, it is necessary to add something concerning accidental homicide, a little through necessity of knowledge.

Homicidium casuale dupliciter contingere potest, vel per operandum rem

licitam, vel illicitam. Whereupon these rules are given by S. Th. 2-2, q. 64, art. 8, who says: According to the law, if anyone gives attention to a lawful matter, employing due diligence, and homicide results from this, he does not incur the guilt of murder. And this even though (as is noted in the commentary on the aforementioned chapter 4, point 6, section 4, note 433) the homicide was foreseen to be in a cause [where it would] be excusable.

If however (as the Sacred Doctor proceeds to say), he applies himself to an illicit work ..., he does not thereby escape the guilt of homicide. Therefore, two rules are commonly assigned in this matter: I. When one bestows care upon a lawful thing, and from it accidentally follows homicide, this person is excused, even if he foresaw that, provided he did not intend it and exercised sufficient diligence to avoid it.

II. Duo sunt genera peccatorum mortalium quae ex hoc genere procedunt. On the other hand, if he gives attention to an illicit act, and he foresees homicide; because then, even though he does not intend that, and uses diligence so that it may not follow, he is not excused. But it must be noted that for this murder to be imputed, it is not sufficient that the work be illicit in itself; rather, what is required additionally is that it be illicit precisely with respect to homicide.

Here it is asked what work is properly said to be illicit with respect to homicide? Omitted are various opinions on this doubt; correctly distinguished is that from the Salamanca school in the place cited. And it should be said I.

Because if an act in itself is frequently perilous, to such a degree that commonly death results from it; then murder is imputed to him who commits that act, although he employ any amount of diligence to prevent harm. Wherefore to these belong the crime of murder: those who kick a pregnant woman with their heels, or terrify her, so that abortion results therefrom; parents who strangle an infant in its cradle; men who cast stones at a person, slinging them down by throwing, as a cause for play. See hence holy [was] in. c. fin. de hom. in 6. that irregularity was made efficacious who commanded someone to be beaten, although he prohibited his being killed, if the mandatary kills him.

To be said II. That is, if an illicit act is indeed perilous, but so rarely that death seldom results from it; then sufficiency for excusing oneself lies in the application of diligence to its avoidance, at least in the forum of conscience. Hence, a cleric is excused from homicide if he accidentally

kills a man while taking care to pursue hunting forbidden beasts, provided he has used due diligence.

Thus it is said in the Third Question, Third Article, Number 147, with Medina, etc., to be said thirdly: That is to say, if the act itself is not dangerous in and of itself, although it is illicit, nevertheless the homicide committed by that person is never imputed to him, if death results from some accident thereof. But if a cleric, during the time of interdict, should beat upon a bell, and by chance the falling bell should crush a traveler.

Item, si ex fornicatione commissa mulierem mortis interitu affligat parturientem. Add, si adulterus cum discrimine inculpatus tutelet virum adulterae occidat. Thus. 2. c. 9. d. 15. n. 13. . n. 438. cum .

As to irregularity, there is great controversy among doctors whether an irregular marriage, where the adulterer, in defending his own life from an aggressor, kills the husband who is accused? Commonly DD teach that, if an adulterer can flee and does not flee but kills the husband who is an aggressor in defense of his culpable life, he is not excused from irregularity. Thus, c. 8, punct. 4, n. 54 and 52, and Sporer de V. prae. c. 2, n. 484, who asserts this to be certain among all.

Reason (as they rightly say; and if by chance flight should bring some ignominy upon him, he is bound to endure it, since himself through such distresses has brought his own culpability into prominence. But what if he could not flee without risk to his life? There are three opinions.

The first opinion absolutely affirms that he is still incurring an irregularity. Thus n. 238. and S. Anton. l. 3. de just. tr. 3. p. 3. c. 40. n. 2. And it is proven from c. Dilectus, de homic., where it is said that one acts irregularly by putting effort into an illicit matter, if death results therefrom.

The second opposite sentiment absolutely negates him from incurring it; and they hold this, namely the seventh question, fourth part, chapter two, number 9, note 106, with Ban. according to c. n. 49. Reason, because murder does not proceed then from adultery except by accident; but per se it proceeds only from an unjust invasion of the husband, whose violence may lawfully be repelled by adultery to defend his own life. They say, however, that the aforementioned text is to be understood in the case of a loved one when an illicit thing, upon which work is bestowed, is proximately and per se perilous to homicide, not when it is perilous by chance and remotely, as would be the case with adultery here, which

rather serves as occasion than cause of homicide, since rarely does homicide arise from that.

The third opinion, which they hold, is found in section 46, article 1, note 42, chapter "cum Filio." Roncagl. de censur. c. 3. q. 4. et n. 50. cum Cornejo, etc., distinguit et dicit: si adulter praevidendo invasionem mariti temerarie accedat et illum occidat, tunc fit irregularis; secundum vero, si accedat clam et cum debita cautela ne a marito inveniatur, tunc fit. And to this judgment I add my own opinion, namely, that if the danger of invasion is foreseen as near and easy, as Roncaglia aptly expresses it, because in such a case adultery is proximately perilous to murder; but if the danger is remote, and the adulterer accedes with due caution, according to what was said above.

And thus it seems that all the aforementioned judgments are sufficiently reconciled. What if a husband, having become aware of adultery, kills his wife—will the adultery be irregular? Nav and others affirm it; but commonly the Doctors deny it.

No one is spored. 82. But themselves, in the same manner distinguish it as in the preceding question; and I also consent to this manner of theirs, if the murder of the wife is near and easy to foresee; otherwise, if remote and difficult. DOUBT V.

ON THE Duel and War, ARTICLE I. What is a duel, and whether it is permissible? 399. What is a duel, and whether it has ever been permissible to approach such a thing?

What if a duel were fated? When is it permissible to accept a duel? And is it permissible to indicate that against a futile and contentious person? What kind of bread is imposed by duello? - And so a contest arises from a challenge, one party saying it and the other accepting it, such that this is not defending life, but exposing oneself to danger: Although this is commonly a mortal sin, yet a just cause would make it licit, which must always be considered. See col. de Ref. > . mor. c. 39.

Item concerning the full duelists, see below. 401: From which it resolves: • 1. [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions]

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for url: http://127.0.0.1:1234/v1/chat/completions] It is permitted to accept or offer a duel in order to conserve the estimation of the army among the enemies and thereby debilitate them, or to terminate the war with less damage. See c. — “5.”

It is likewise permitted to accept, if another shall have conceded that he will seek to kill thee, nevertheless: thou shalt try thy fortune with arms; for it is but defense, placed there, because otherwise thou couldst not escape. Moreover, Father Cuniliati probably understands that in treatise 4, chapter 9, section 5, note 3, he states: "If a nobleman is challenged to a duel, he can lawfully respond: 'I cannot accept this duel as it is contrary to Christian principles; nevertheless, I am prepared to defend myself against unjust aggressors.' " Similarly, if a judge should wish to involve two men condemned to die in a duel, each would be constituted as the minister of justice for the other. Finally, if a noble man is provoked to challenge himself in the royal court, or a soldier in the camps, for the sake of mere defense, with hope of prevailing, otherwise deprived of his dignity, office, favor, or grace of the prince by suspicion of cowardice, he does not dare condemn him; this excuse is excused according to Hurt. 2. 2. d. 170: sect. 8. §. 73. d. 8. q. 6.

Therefore, inquire whether it is permissible for a nobleman or a soldier to accept a duel, and even to offer one, if otherwise he would certainly be deprived of his office; by which he and his family are sustained. They affirm this: Processus c. 3, n. 608. With Pichler, and Analecta item n. 204. And 418, and 428 with others. Reason, as the aforementioned authors say, because in that case not merely honor is defended, but also goods necessary for life, whose loss is certainly presumed to be unable to be otherwise repaired. And to this opinion adhere Lessius l. 2. c. 9. n. 49. 2. c. 39. n. 7. . 6. d. 6. p. 7. n. 9. cum Con. et Val. dum dicunt, licita posse acceptari duellum ad necessariam defensionem bonorum magni momenti, hocque probabile putant. proc. c. 4. q. 2. r. 3. st. Croix l. 3. p. 4. n. 836. modo actu alter bona invadat, et actu pugnandum sit: non vero, si posterum.

But today both aforementioned opinions are less probable, according to the first and fourth of the five propositions, which SS. P. Ben. XIV. Recently condemned in his constitution, which begins with "Detestabilem," issued on the day of November 10th, in the year 1752.

These propositions are thus stated: I. A military man who, unless he offers or accepts a duel, would be held as fearful, timid, abject, and incompetent for military duties—and thereby deprived of his office by which he sustains himself and his dependents; and should he ever hope for

promotion or any other right due to him and merited by him, he should forever lack such hope, and be subject to blame and punishment, whether he offers or accepts a duel. II.

Even when accepting a duel or provoking it out of grace to defend one's honor and to avoid human vilification, such actions can be excused if they know with certainty that no fight will ensue, as one intended to prevent it from being fought by others. III. He does not incur ecclesiastical penalties, imposed by the Church against duelists, who, as a leader or official of the military, accepts a duel out of grave fear of loss of reputation or office.

IV. It is lawful in the state of a natural man to accept and offer a duel in order to preserve fortunes with honor, when their loss cannot be repelled by any other remedy. It is licit in the state of natural man to accept and offer duel to preserve with honor his fortunes, when otherwise their loss cannot be repelled.

The granted license may also be applied to the state of civil society that is ill-ordered, in which justice is indeed either denied through negligence or openly denied by magistrates through malice. Question 2. Whether it is licit to challenge an innocent duel against a false accuser when no other remedy exists to avoid the unjust sentence of death? Lugo affirms: "Article 10, note 184: Chapter 39, note 7."

Banishment. Caj. Azor, before point 7, section 2, note 467.

The reason for these is that each one is permitted to defend his life against an unjust invader, as this alleged unjust accuser is considered here to be. But it must be held according to no. 169 and as . Reason, because in this case defense would be excessive, as is proven in S. Th. 2-2-q-64-a-7, since death would not then proceed directly from the omission of duel, but from an unjust judgment of the judge; and it seems that the contrary was reasonably condemned in proposition 18, which said: It is permissible to kill a false accuser, false witnesses, and even a judge from whom certain injustice is imminent if high authority cannot prevent innocent harm. 404. — Question Nonehere 3: what penalties were imposed for duel.

Respond. three to be from 25. cap. 19. de Ref. I. Excommunication ipso facto incurrenda et Pontifici reservata, quam etiam patrini consulentes efficaciter incurri (intellige), si non persuaserint; ut bene ait Elbed de hom. num. 122.; item favorem praebentes domini dantes locum; ac etiam spectatores, non quidem illi qui obiter transeundo ibi reperiuntur, sed qui de industria spectant, et sua praesentia quodam modo approbant et

animant duelantas, prout . et Oemens VIII. explicant Tridentinum: vide Elbed d. n. 122. II. Pena est proscriptio omnium bonorum cum perpetua infamia; haec tamen pena non videtur recepta in nostris partibus.

III. a est privatio sepulturæ ecclesiæ, sicce, si duellantes in ipso conflictu decedant. They receive. 142. But in the aforementioned bull, "Detestabilem," even these are deprived of ecclesiastical burial, although (as it is said there) they have departed this life fortified by the Sacraments.

This arena is almost entirely burned only on account of a strict duel, namely in place, time, and with arms; not indeed on account of an improvised conflict, although paying parties may have rushed to some suitable place with the same impetus. So go probabilter . 132. Cum idemque probabilter dicunt 6. c. 1. §. 3. n. 11. tr. 13. r. 39. ac . 137. si quis alteri dicat: tecum pugnabo prima vice, quid mihi obviaveris; nam in hoc casu, postea etiam habito conflictu, isti non incurrint peneas, qui tunc deest designatio loci, et temporis. ## ARTICULUS II. ### An, et quousque liceat bellum? 1. When shall war be permissible? 2.

What ought the prince to do, so that he may lawfully wage war? Whether a war can be waged solely on the basis of a probable opinion? 4. To what are princes bound? 5.

May it be licit for them to resort to arms in aid of heretics and Gentiles? To what purpose are leaders bound? 7. May soldiers be permitted to wage war with doubt regarding the justice of the war? 409. - a.

R. R. Defensive war, by which an unjust violence is repelled, is permitted even by private authority; but offensive war, which one inflicts upon another, requires three conditions: 1. That it may be conducted by the authority of the prince or magistrates, there must be no superior overruling them: such is the pope, the emperor, the kings, and certain other authorities. Of the Veneti, Genoese, etc. 2.

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Fill. n. 485:,,,

may be certain of his justice and that there be a grave cause. To whom wisdom will lead: 4.

That he may take care to have not merely cunning cave-dwellers, but also good counselors. That he may attend to this, lest it be hindered by his own, or that letters and instructions addressed to it be perverted or counterfeited. 3. If it retains justice in war according to evangelical laws not only from its own counselors, but also from various theologians, and liberality is thereby diminished.

If you have heard all these things, even you yourself will be brought before God to account for that which was in your soul, and for what you desired to do at the point of death. Finally, although a probable opinion suffices concerning the justice of war, yet if the justice remains equally doubtful, and one is in possession while the other is not, it is not permissible for him to declare war, since the condition of the possessor is better. Fillute: tr. » 29. c. 9. q. 4. . 5. c. 2. d. 3. ubi cum Diana p. 4: tr. 4: v.

It teaches that even a prince may concede reprisals, provided certain fixed conditions are preserved, which see at 4. c. 6. disp. » 5. p. 4. et hoc infra art. seq. 404. — It is asked, whether a prince may make war against another, in good faith possessing a kingdom, by inferring himself from an opinion merely probable? The first opinion affirms as stated in c. 1, n. 36, and Az.

Fillius. . 21. c. 8. Punct. 3. §. 1. n. 20. et hanc sequitur Sporer de V praec. c. 2. n. 100. The reason for these matters is that the prince should not be in a condition inferior to that of a private individual; for if there is conceded to private individuals the faculty of bringing an action over a thing possessed by another when they have merely a probable opinion in their favor, why should this not also be conceded to the prince against another, having the faculty of indicating war, at least with regard to reclaiming a part of the kingdom possessed by another, since there is no superior judge who can arbitrate the dispute between them according to law?

The second opinion holds that, as prince, not being a possessor, he should be able to wage war on account of an opinion at least more probable. Thus; at least for obtaining a part of the kingdom, as they say. Reason, because in that case the right of the nonpossessor prevails; and just as it would be a matter for adjudication by a judge if he were a private individual, according to the judgment we speak of in book 5, number 240, verse v.

Inquire: Thus, if a prince cannot approach a competent judge, he can nevertheless properly vindicate himself in war. This probable [solution] Croix calls in his book 3, page 4, number 869. [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions]

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The second opinion holds that it is illicit in itself according to Exod. c: 34, v. 12, where it is stated: Take heed lest ever thou join thyself unto the habitations of the land thereof, which shall be for thy ruin: Thus Ramirex, Pizarro, and others many, whom Diana has collected on p. 40, tr. 2. Addit. Res. 2.

The third opinion states that it is licit in itself to advocate for heretics or Gentiles, but is often illicit by accident due to dangers imminent to the refutation of the faith. Thus holding according to Bus., S. Connich, Prado, Tapia, n: 34. This third opinion is indeed speculatively probable, but in practice it seems altogether to be held secondarily with Sporer n. 167 and Summa ibidem n. 35 and Ratio, because it is morally impossible that, having formed a society with those hostile to the faith, the aforementioned harms to religion not occur. 407. — « 9.

Leaders, tribunes, centurions, some officials sin, » they are held to restoration: 4. If they have fewer soldiers, "than in the settlement of the salary they exhibit. 2. When they are bound by duty to take care of the accounts, and provide soldiers with corrupted food or drink from which diseases may arise. 3.

If in their journey through regions they receive money from various pages, let it be so that they do not spend the night there, or perish. 4. If to one soldier they give more syngraphs for different houses, according to t. 4. r. 27. and 28. 5. If from the wages of soldiers they subtract, let them permit them to extort necessary provisions from the innocent.

If stipends to soldiers are withheld, they will permit them to extort necessary provisions from the innocent. The soldier who is prepared to merit a wage in both just and unjust war is in an evil state and incapable

of absolution unless he corrects his mind; and indeed, if he fights in an unjust war, he is bound to make restitution of damages; unless innocent ignorance excuses him: for then the mere making right of those things which are in kind suffices. See below. 408. — » 14.

Si vocatus ad bellum sit subditas principis, qui bellum gerit, aut ab eo ante conductos, non tenetur inquirere de justitia belli, quamdiu nulla vehemens suspicio occurrat in contrarium, quae positive reddat dubium; quia potest praesumere pro suo principe, cui in dubio debet obedire, ejusque auctoritas plerumque illi sufficit ad formandum etiam positive judicium probabile de justitia causae, ne cum dubia fide operetur. See C. Lugo d. 48. de just. s. 4. n. 24. » If however he is not a subject, he is bound first to inquire, and afterwards at least to form a probable judgment that the war is just.

Mol. d. 143. n. 171. ». 2. t. 3. c. 42. n. 8. Axor, Matd. treat. 5. misc. r. 96. et t. 3. r. 7.

Card. de Lugo in loco citato Escobar cap. 7 ch. 8. » It is asked, whether soldiers can wage war when there is doubt about the justice of the war? Dis- in prendencem Bas. sipisuat sa bis ubi regis bellum inferens: tunc, nisi certisint de justitia in bello, possunt, imò tenentur obedire principijubenti.

Therefore commonly San. Dec. 1. 6. c. 3. n. 4 5. . prec. c. 2. num. 4 1 2. et Satu. deeod. V. prec. c. 8. punot. 3. §. 1. n. 2 9. cum. . Salas, et Villal.

Ethabeturex - pressuminan. What is the father, cousin? 2 3. q. 4. where S. August. siodo - cet: Just man, if he be subjugated, a soldier, and even a sacrilegious man, may dance and play ball; but if it is decreed that such things should not be done, either this is certain or it is not certain.

Ralio, quia subditi erunt ut obedirent, non est peccatum certum; et insuper praesumerent bellum in peso justum, quoties non constat contrarium. But as regards those who are not subject to obedience, it must be said that they can fight, provided first they ascertain the justice of the war; for it is just that when there is a delay in inflicting harm, no injury should be inferred, nor does it stand to reason that there be injustice on the part of him who waits. Therefore it is commended.

Cajet. 2. 2. qu. 4 6 9. art. 2. ad 4. Heal. Sporeril. o c. et Salas. ibid., n. 30. cum et Villal. contra abiquos apud Palaam.. Concerning however foreign soldiers, conducted with pay, the same must be said as concerning subjects; but understand this: if they are found to have been conducted

before the war was waged, then they too should be considered just in the conduct of the war. Otherwise, if after the war evidence is brought against them, even these should also be judged according to the justice of the war.

Thus Sporer hopes, and c. cum A. A. cited.. 42. A soldier understanding that a war is unjust, in which he is involved, cannot be absolved unless he wishes first to remedy the extent [of the injustice], and meanwhile abstain from hostile acts, such as murder, plunder, etc. See 2, t. 3, c. 42.

But such a poem to kill a hostile invader soldier, see Essob. e. 7. c. 8. ## ARTICULUS HI. ### What can justly be said in war? 409.— Resp. Therefore, in war justly speaking, certain delays and abstentions from combat are necessary to the end of the war; for example, killing, spoliating, etc., may be innocent (as is understood by those who are not capable of bearing arms: namely, children, women, old men, religious persons, clerics, pilgrims, merchants, and those who are not in a state of justice); direct combat they cannot have; but good can be done externally, if they are part of the hostile party; otherwise, the purpose of the war cannot be achieved. Mol.

Because p. 2. c. 4 0. 4 4. e t 4 2. . n. 4 9 1. eto. It is just that, whatever parts of the matter are liable to punishment on account of this offense, innocent people may not be punished thereby, lest the dominion of the ruler be subverted. It is said: "That which has been taken by lawful means, should be restored to the ecclesiastical authorities without exception, except what may have been taken for the use of a just war." Therefore, resolve: 410. — « 1.

It is permitted by accident sometimes to burn churches, and to draw enemies from them, to plunder them, and to kill, if, for example, a church, like a fortress, be used in opposition to nature. Silo. v. War, n. 14.

Sa, "2." Against the enemy it is permissible to use ambushes and stratagems, provided that there be no lies: even though such actions, for instance, when explorers feign friendship with the enemy, are not mortal sins. Those, however, against which no prudence is given to beware, such as poisoning wells, waters, and glands, are contrary to the laws of war, and are not permitted.

Mol. d. 3. « 3. Faith given to the enemy must be kept; unless either you were forced to give it or it would yield to grave detriment either of your own welfare or religion. Or finally, if the enemies do not keep it: or indeed conditions and circumstances altogether are changed. Duval. cap.

responsionis 10.

See also 3. 1. 3. c. 12. “4.” Captured in war, even from the perspective of those who captured them justly, they can flee unless hindered by scandal or a special promise. They can indeed be captured in battle, from an unjust part of the captors, and they can both flee and carry off the goods of the enemy with them. 2. tr. 3. c. 12. n. 16.

Whether it is licit to kill a hostage, see above doubt case 4. situation 5. “ 5. Certainly, it can indeed sometimes (rarely, nevertheless, and only for gravest causes) happen that a city be taken as booty: yet soldiers cannot, on their own authority, commit robbery or inflict damage upon enemies, because they are executors only and ministers. See Sa, verb.

War. . 3. c. 12. t. 4. toto. While however the city is unjustly plundered, it is held probable that only the private soldiers be liable for the damage which they themselves have incurred. See below, treatise 5, chapter 2, question 3, "6."

The soldiers commit a sin when they bear the burden of restitution, if from those among whom they lodge or pass through, whether peasants or others, they take away, or extort by invitation, or even accept as gifts (unless it be certain that all such things are freely given: for those gifts are usually not spontaneous but coerced); besides what is provided to them according to the prince's constitution; unless they find themselves in extreme necessity, or at least in grave need: t. 4. r. 21. (Soldiers are also bound to restore all damages which are inflicted by enemies and which they do not hinder: thus . 154. because they themselves are bound by justice to prevent the damage to the state. Soldiers also sin if they flee when victory is still not hopeless, or if they depart from camp without just cause; similarly, if they depart from camp out of grave necessity because of neglect of pay. . 180. cum . Roused by a spur, etc.) u.

Licit reprisals are permissible in these conditions: 4. That it may clearly appear, that the citizens of another republic have committed an injury. That the superiors, when requested by them, may refuse to administer justice. 3.

That it may be manifest that they are culpably responsible for this resurrection. 4. That the supreme prince, upon cause known, may grant it. 5. That no greater damage be inferred than is required by just satisfaction.

That non-ecclesiastical persons be not admitted. t. 4. r. 72. ec 18. aliis.. 1.

You inquire. To whom pertain the goods seized from hostile persons?

Resp. 1. Immovelia cedunt principi, aut reipublicae, mobilia fiunt. Acceptor, nisi consuetudo habeat ut pars cedat principi, et commu- 4. mitati. 2.

By the law of Caesar, unless custom be otherwise, goods taken by a just war from those who unjustly possessed them become the property of the conqueror after they have been transported to his domains. Mol. d. 18. 7. Hurt, t. 2, d. 169, sect. 12, § 419, ubi requirit, ut una saltem nocte possederint.

See also what is accustomed to be committed in war. 2 d. 40. and seq. t. 4. 10. 23. where against Durand it teaches that this judgment should be applied in practice 11. Thus, in the second chapter: On the Sixth and Ninth Commandment: Thou shalt not commit adultery, nor covet, etc. I join these two commandments because both explicitly or implicitly prohibit the same thing, namely, sins of impurity and licentiousness. Luxuria est inordinatus appetitus vel usus delectationis seu sensus venerei, qui fit cum commotione spirituum circa generationem ser- vientium partium corporis venerearum, ita ut appetitus vel aliae delec-tationes, licet etiam sensitivae aut sensitivorum sint, si tamen non sint venereae aut venereorum nec ad ea ordinentur nec spectent ad luxuriam. Now the acts or sins of luxury are distinguished into imperfect ones in which the ultimate term of venery does not intervene, namely, the decision of seed, such as internal desires and delays of pleasures, which take their species from objects; and perfect ones, and consummated, which have already received the said terminus.

Which are again two-fold. Others are natural; those which do not repugn to nature nor differ in the reason of luxury (although sometimes they may differ by added deformity), e.g., adultery, fornication, etc.; others are unnatural or against nature, in which conditions instituted by nature, e.g., identity of species, due vessel, etc. 230. Book 4.

Treatise 4. Of the sixth to the ninth commandment of the Decalogue. It is not kept.

And these also differ in species with regard to lures; for in them the variety occurs according to the modes in which they are committed, contrary to the nature. DUBIUM I. Is it true that sins are found in kisses, embraces, touches, obscene words, and similar actions outside of matrimony? 413 What is venereal delight, what is sensitive delight? 414 How can all acts of Venus be evil? 415 Is there a consideration of the littleness of matter in

matters of Venus? 416 Is there a consideration of the littleness of matter in sensitive delight? 417 Are kisses sometimes licit? 418 And when are they excused from mortal sin? 419 Concerning the sight, and the turpitude of one's own body, or the mingling with beasts. 420 Concerning the sight, and the turpitude of another's body; and concerning the sight of genitalia mingled with beasts? 421 Does it always count as a mortal sin to look at the shameful parts on the sixth day of diversification?

Beastly things have you made fair? And whether this aspect assumes the appearance of an object? 422 Is it licit to gaze upon the honorable parts of another sex? 423 Is it mortal to look at the chest; thighs, etc., of a woman? 424 Is it mortal to look at obscene paintings? 425 Is it licit for a woman to adorn herself and to make her face fair? What if it delegates the breasts, or uses masculine clothing?

Loosely referred to 1.8. n. 52 and 54. When speaking seriously and uttering foul words? Is it always a grave sin to hear lewd comedies? Is it to those who provide them with money or with praise? Are they those who condemn and compose them? Is it permissible to lead dances? Does a woman sin by allowing herself to be touched? Is a woman bound to cry out in order to avoid impudent touches? Are touches permissible, etc., between husband and wife or one offering another? 413. — « Resp.

To discern this, first must be distinguished the intention and delight in reverence, and from the intention in venereal matters, and the sensitive citation, and the proportion and conformity of the thing cited with the organ of touch. Then it must be known that the intention and sense of venereal things are mortal, and to exclude them from the kingdom of colors, according to the Apostle to the Galatians 5. Now we proceed to treat that matter which has polluted the minds of men with its very name.

Grant me, I beseech you, a chaste reader, forgiveness if here you find that more questions and circumstances omitted by Father Busembao have been discussed and declared: how gladly could I have explained it more briefly or more clearly! But since this is a frequent and abundant matter of confessions on account of which a greater number of souls will be led to hell, I do not hesitate to assert that for this very reason impurity: a vice, or at least not without it, all who are condemned will be damned. Hence it was necessary for me to provide instruction for those who wish to learn moral science, so that (though as chastely as possible) I might explain myself clearly and discuss many particulars.

I pray therefore those who prepare themselves for the office of hearing

confessions, that they read this treatise on the sixth precept, as well as another on conjugal debt, not when they are about to receive confessions next, but only then; and let them read it solely with this intention, casting off every kind of curiosity; and at that time often raise their minds to God, and commend themselves to the immaculate Virgin, lest while striving to acquire souls for God from the forum, they suffer damage to their own. Although under this precept are not expressed only those whores who properly signify in Greek the word macchia; nevertheless every venereal act outside of marriage is forbidden by the same precept. See preceding chapter, canon 4, point 4, note 3, who thus approve this with St. Augustine and St. Ambrose. For although fornication is a lesser evil than adultery, nevertheless, because according to the law of nature the carnal union is ordained only for marriage by which not only children can be begotten but also well educated, therefore God prohibited in this precept every copulation outside of marriage and at the same time every act of venery that is ordered to generation.

Besides the fact that fornication is already elsewhere expressly forbidden by God, as stated in Yos. 29, Yos. 17, and 1 Yos. 9, "3." Oxyla, ablusionis, concupiscentiae, tactus, et similia, si extra matrimonium fiunt, ex intentione actus luxuriosi vel ob delectationem venerea, etiamsi non illam perfectam quae est in seminatione, sunt tamen peccata mortalia semper: quia eo animo extra matrimonium sunt impudica, et natura sua talis delectatio tendit ad perfectam. Chapter 9, Note 294, Chapter 3, Article 8, Section 9, Decree 46.

415. — Do you inquire whether a small matter may constitute luxury? It is to be noted beforehand that the Doctors distinguish between the delight in venery or carnal pleasure, which is sufficient with a commotion of generated spirits, and the delight in sensible pleasure, or natural one. Here two doubts are raised: whether in the matter of venery is given a small quantity of matter? L. 9, d. 46, n. 9, sectoso periculo pollutionis vel consensus in actum carnalem sentit, dari parvitatem materiae, prout esset atrectata inatum vel pedem feminae, brachium premere vellicate seu intorquere digitos.

And the same is held: from the Sixth Precept, c. 3, punct. 4, n. 79. to 80. It seems that the same holds true in chapter 8, section 1, notes 8 and 9. But: the way proceeds; for it distinguishes with Palio (who calls this opinion most commendable), and says, that indeed no smallness of matter is given in the thing of reverence, wherein any slight delight gravely is evil; but nevertheless given is in the matter of luxury, which extends more widely to the senses of touch.

Hence he says, a light touch from jest, or without venereal delight, is not culpable; it is not to exceed. Nevertheless, his objections notwithstanding, it must be held absolutely with Super. Prop. 40. damn. ab Alae. VII. et Salut. ibid. n. 81. ac Moya, et . 40, quae dicebat: Est probabilia opinio, quae dicit, esse tantum veniale osculum habitum ob delectationem carnalem et sensibilem; quae ex osculo oritur, secluso a periculo ultraioris consensus et pollutionis.

Si ergo non detur materia levissima in osculis, nec etiam danda est in aliis tactibus cum delectatione carnali. Reason, because any carnal delectation or motion is some kind of incipient pollution or movement towards pollution for those serving reason. Therefore justly does Decretal preface article 8, year 2, and point 3, section 5, number 65, together with Lopacius as previously mentioned, namely, to damn mortal sins for the reason of carnal delectation which is then experienced, or at least on account of the danger of such delectation.

And justly likewise Crico l. 3. p. 4. n. 941. rejects the opinion of Arriaga, who says that one does not gravely sin by consenting spontaneously to such light carnal motions, which happen spontaneously. Doubt II. is whether a small matter is given in sensible or natural delectation, namely, if someone takes delight in the contact of a woman's hand, as from the contact of something gentle, like a rose, bread, sejici, and similar? The first opinion affirms with St. Hurd. Moya, et pluribus apud . §. 3. n. 36. et adhaere Bus. infra a. 4. et sect. 2. concl. 1. cago Secunda tamen sententia negat cum Cajetan.

Diana, and others at §. 38. to 40. Reason, because the touch, insofar as it is delightful according to the sense of touch for a girl or a youth, per se tends to pollution. And I think this must be entirely held, because they rightly say with Fil. in the sixth preceding chapter, question one, that the first opinion is practically improbable, since on account of corrupted nature it is morally impossible to have that natural delight without feeling carnal and venereal delight, especially from persons suited for copulation, and especially if this act is performed with some affection and delay, as stated in the preceding note number 186.

Hence rightly do they speak Sporer in c. 3, n. 687 of Marriage, and 9 d. 46, as well as commonly Croix in l. 3, p. 4, n. 804, regularly that the first sentence is not practically probable, because per se it is mortal to expose oneself to the danger of consenting to a venereal delight. However, Croix excepts someone from whom such a nearby danger would be absent. [TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions]

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[TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] Herefore is not accused as mortal sin he who, moved by passion, touched his own private parts without just cause.

Here rightly it is said that a mortal sin arises from an undue affection for one’s own proper parts or genitals, if it be committed with carelessness and slothfulness, without necessity (as must be understood); otherwise, briefly, as Sybius and Sameh say, ibid. Et coniux, si ipsum voluptuosely tangeret, pecceret? See what is said about the mater. 1. 8. n. 986.

It is dangerous, however, to look morosely at the omission of animals, as the libidinous soul notes well and in a manner so, if indeed. Tamed. I. VII. C. VIII. §. II. n. 5. Now Ebed n. 214. and Holzmann n. 714: "However, if touched by such, it is looked at with a natural affection of one's own body," let it be done for some reason other than evil, lest even then it will not come to pass, as for example, if you wish to extinguish illicit desire through friction: yet still the danger of pollution would be avoided; or you might consent in that, if by chance something improper were to happen contrary to your intention.

Fill, n. 214. Tactus nudi, et aspectus partium inhomostarum alterius corporis, maxime diversi sexus, aut concubitus humani ex curia- tate (nam de necessitate aliud est, etiam sedus affectu venesce), videntur non posse excusari a mortali praeter gravem indecentiam, et periculam proximum actus veneri: nisi tamen aspectus fiat ex loco tam remoto, et ita obiter, ut haec absint. Note I. Concerning impudent touches: that they are permissible solely out of necessity; hence doctors touching or looking at persons of a different sex out of necessity to heal them do not sin, even if they suffer an accidental introduction of pollution.

Tamo. 6. Decree concerning immodesty. Article 1. Number 49 from common sources, and Numbers 42 and 3 with point 3, section 5, number 68, and it also loves. Thomas 2. 2. quast. 144. a. 4. et Sporer de matrim. n. 674.

See if it is to be found in n. 144. This is true from a speculative standpoint; yet the physicians have not sinned in this continually, for they would never sin in these matters! But he who touches another’s pudenda without such necessity is not excused from a mortal sin, even if it be of his own

person of a certain sex, unless perhaps it be done through jest or playfulness, or out of curiosity, as they hold in 8. §. 2. n. 4: and Omtac n. 906.

It ought to be rightly said in section 4, note 50: this is not to be admitted practically, but only speculatively; provided that the touch be light, and not intentional, nor lasting any notable length of time. What if someone were to touch another's sacred parts through clothing? Cross n. 904. with Saint-Chézeaux, neither does it excuse from mortal sin unless it be done out of some petulance and not with a light non-carnal delight.

And this is justly so; n. 49 also condemns the practice even of mortal sin if such parts of different sexes are touched in that manner, even though it be through a partition, because it is exceedingly dangerous. But Croix n. 902 probabiliter excusat à mortali ancillas tangentes pudenda puerorum, dam illos vestiunt, nisi eam mora aut carnali delectatione hoc agant. Notandum II. tangere genitalia brutorum non est ordinariè nisi veniale, ut dicat Croix l. 3, part. 4, a. 903.

Saint Thomas on the Matrona, Book 9, Decree 46, Article 45, etc. It is more probable to say that a touch of that kind up to pollution should be considered thus, as Croix says in the same place and Bibel de 6 precepts, note 244, edition v. At our conclusion and Sporer on marriage, cap. 3, n. 697, om Bon. Salsas, et .

Reason, because although this occurred solely for the cause of life, nevertheless it is an action that per se most vehemently incites to venery. III. Notandum, quod secundum Basiliam, hoc a. 7 et in puncto 4., n. 13., aspectus non esse de se mortale oitra periculum consentis venereo, nisi aspiciens esset valde propensus ad sodomiam, ut notant vehnis, adderem: puercher adolescentes aspiceretur nudus. 14A. — Sed quæritur: an aspicere pudenda personae diversi sexus vel conubitum humanum cum voluntaria delectatione visus sit de se mortale? Cajetan and Navarrete deny this in Sanches' work on marriage, lib. 9, dist. 46, n. 14, because they say that delectation from sight is not such as to lead to venery like delectation from touch; for one can remain in natural delectation only.

But with St. Anthony. Gera. . praecept. c. 3. punct. 4. n. 7. 9. et 42. omnino dicendum esse peccatum mortale nisi visio fieret a looo longinquo et tempore brevissimo ut in n. 43. et q. 4. Reason, because such a disgraceful appearance very much leads to doubtfulness concerning luxury.

Nevertheless, it is excused from the mortal sin in fin; if there be no danger of disturbance, on account of the age of children, or even of old people, or of those with a cold complexion; yet I do not think this to be allowable, since at least the sight of such an ugly aspect can give rise to the peril of concupiscence. They also say: n. 43. A man looking upon the pudenda of adolescents does not commit a mortal sin unless he be greatly inclined to sodomy. But I would find it difficult to excuse from mortal sin anyone who deliberately and gazes upon a beautiful naked youth.

They note, however, at 43. in the end with St. and Filius, that you look upon the same species of object as you touch it; and therefore they say that the quality of the person who was turpiter looked upon must be explained in confession. But to this doctrine more truly opposes Croix, lib. 6, p. 2, n. 4630, where he says that one who looks at a person without any desire is not bound to say what kind of person it was: how then can a woman commit sacrilege by looking at a naked priest turpiter, when there is no violation there which consists in the violation of sacred person? And how can anyone commit incest by looking turpiter at a consanguineous relative? 422. — Question 2: Is there any guilt in looking at the honest parts of a person of beautiful sex and different kind?

S. Antonin. . Caj. ibid. n. 2. dicunt, hoc esse per se licitum, prout licitum est aspicere quascumque res pulchras, ad visum à Deo creatas; ido tenent, nullam esse culpam per se, præcisâ curiositate, aspicere mulierem pulchram. And the same is found previously in article 7, section 2, at the end, when speaking about a secular man. But in practice I think this is rarely excused as a venial sin, unless it be done out of due urbanity or some other just cause.

Otherwise they justly say that it would be excusable neither by venial nor by mortal sin, if the aspect were prolonged, because then it cannot be excused either by a venial sin, nor even by a mortal sin, if there is a proximate danger of shameless gluttony or of sluggish delight, which undoubtedly will be present when there is a disturbance of the spirits in looking. Thus n. 3. the whole . S. Anton. 12. et . 488.

Ino very justly says: preceding chapter 4. regulations in practice 4., that prolonged sight of a beautiful woman's beauty is especially dangerous for sinning, if anyone is affected by an inordinate love towards her. And the same thing is rightly said about protracted idle conversation with a girl who is inordinately beloved, to whom it very much clings, n. 22 and from the same tract 26. c. 7. punct. 2. n. 3 and 4, etc. D. Thom. saltem propter proximum periculum labendi. 423. — Sedere autem partes minùs honestas, sed haud turpes, mulieris, scilicet pectus, brachia, cura, secluso,

peziculapasùs, et modo aspectus non sit diuturnus, ut supra de se, non est mortale; ita Nam. in! n. 49. . l. 9. d. 46. n. 35.

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What is more reasonably said, "if one were to do it only out of lightness or vanity. Thus Kaj.: behold, when he saw. he went out. and it came to pass that n. 48. from圣言 And the same is said to be done militarily by her, using a painted mask, as 'n.'46. with S. Augustine at chapters 4 and 3, who excuses equally the woman who commits acts more foul than those worthy of concealment. "See elsewhere spoken of regarding scandal A. 48 n. 55."

"We have said that a woman, according to local custom, by uncovering herself slightly as a pledge or exposing her breasts somewhat, does not sin gravely of herself, speaking per se, if perhaps others are scandalized thereby." It is doubtful whether one should suffer any particular scandal for oneself. See what was said in the same edition, volume 1, page 3, note 54. Formerly, when wearing a woman's garment while nursing, one does not sin grievously by oneself; but it is not uncommon for it to be mortal.

See ibid. n. 52, verse 2. If a woman... But as for the glance, and even the touch promptly given (though less frequently on account of the danger added), and the petulance or curiosity regarding the dishonorable parts: of another body, but of the same sex, without affection and danger: you consent that it can be excused by venery, as when something is swimming; or when they favor each other, teaching. 3rd part, 4th chapter, from 1152 moral code, book 6, note 43. 13. and notes 27, 28. 12. note 15. "(See what has been said, however, at 420.) 1.. 4268. 8."

Turpia verba, lectio obscenorum, spectatio comediarum turpium; inhonestae cautiones, gestus, litterae, et dona amatoria si fiunt ex curiositate vel vano solatio non sunt mortalia sed quicumque si fiunt animo inhonesto sive venereo vel cum periculo ruinæ spiritualis seu aliorum. Inquire whether it is a mortal sin to utter vile words? Whatever each DD may think differently about this, let it be said: that it is not wrong to utter or hear vile words; for the same thing is said of him who utters them as of him who hears them; but this depends on whether what is spoken is good or evil. Thus. 1. 9. d. 46. n. 34.

"Dicendum est quod loqui turpia ob vanum solatium sive jocum domini non nascitur." Thus with Bus. here, and S. tit. 5. c. 4. §. 8. acfiduct. a: 35. cum S. Antonin.: §. 4. n. 2. nisi audientes sint ita debiles spiritu ut scandabum patiantur, ut etc. aut, nisi verba sint nimis lasciva, ut addunt .

16. c. 3. planet. 1. n. 19. Hence they note number 20 with Dicasterium, that detestable speech which is uttered by lewd persons, vinedressers, and muleteers; because it is said to be not mortal, since it is spoken in jest and heard as such. Thus also S. Anton. 1. c., says: 'Where such foul words are spoken with a certain licentiousness for consolation, although they themselves are not mortal, yet on account of scandal they can be mortal; that is to say, when those who hear them are in a frivolous spirit, so that the words would seem very lascivious.'

The same must be said of those who make or sing songs full of licentiousness. Thus also it is said by Bus. num. 1. et n. 695: 'To read turpient books out of curiosity alone, without any turpi delectation or danger thereof (for confessors diligently strive to prevent this, as much as they can, lest youths, from such reading, everywhere suffer great ruin of the soul). And the same is to be said of the hearer of the aforesaid words for vain solatium; but as Recte says S. Antonin. l.c., that he who hears turpia with deliberate delectation in that turpitude does not seem to be able to be accused by mortal sin, just as one who slowly delights in turpi cogitatione, unless perhaps these things occur between spouses.' III. Dicendum cum eodem esse sine dubio mortaliter turpi- cere ob delectationem captam ex cogitatione ipsarum rerum turpium, vel periculo talis delectationis ut rectè addit c. sive periculo gravia scandali quod frequenter adest cum talia proferuntur coram juvenibus vel puellis ut benè advertit . Hence they hold that one cannot be excused from a grave sin who names shameful things or the manner of copulation, especially before adolescents and honest young women.

To name one's own parts of the body that are considered shameful, before others of the same sex, I think, speaking generally, is not a grave matter. They indeed sin mortally when they relate their own foul sins through boasting: and then they sin not only by the sin of scandal through those who hear, but also very easily by complacency in respect to the sins themselves, as rightly they say, n. 24. And therefore in confession they should explain the species of sin of which they boasted. However, to converse honestly with foreign girls about oneself is at most venial; but on account of danger, especially in prolonged conversation, it can be grave, as we say n. 422 in fin. cum reg. 2. in praeci. 427. — Do you ask whether it is mortal to listen to comedies that are turpitudinous?

The response is that if the comedy is not notably turpid, then he who hears it does not sin mortally, unless one who is experienced in his own frailty. Thus. L. 9. D. 46. n. 42. If however in a comedy repugnant and foul things are represented notably or even merely so, it would certainly be mortal to gaze upon that on account of the delectation arising from those very foul

things; but venial either on account of curiosity alone, or for vain solace, consent would be given to enter into a foul delectation. Thus . n. 44 and n. 4 . with Diana (concerning cooperation in regard to which we shall soon speak) each one bringing his own money, contributed to such a representation.

But all gravely sin who concur plainly to such comedies notably turpulent, even if the comedies were not represented themselves? They deny Turrian. Balduinus et 2. n. 239. And to this opinion I formerly adhered.

But I now consider it better to affirm with the same Croix, and n. 242. Reason, because these persons, although materially, yet positively cooperate in a gravely sinful action; such cooperation is not licit unless it be made out of a grave necessity or utility. And the same speaks rightly, for they would neither be the cause of that dishonorable representation, because they would not positively influence it; nor occasion, for (as is supposed) even without them the pleasures would have been acted upon. Receive clergymen and religious persons, who cannot be there without causing a grave scandal among laymen.

Thus indeed rightly teaches Benedict. XIV. concerning the Synod 1. 44. c. 40. And receive also laypeople, without whom there would be no congregation. In no way would I excuse a young person from mortal sin who, without necessity, desired to participate in such conveniences out of curiosity, unless he were extremely fearful and, moreover, had experienced many times that by looking at them he never committed any deadly sin; so as not to provide other young people with an example by assisting at such disgraceful representations. 428. — It is certain, however, that those representing or composing these notably disgraceful comedies cannot be excused from a grave sin on account of scandal to others, even though it was not intentional. . c. n. 42. with S. Anton.

Sylv. ib. Note however what is fitting. 2. q. 468. art. 3. ad 3. namely: For all kinds of conversation pertaining to human life, some lawful offices can be assigned. And thus the office of actors, which is ordered to the exhibition of joy for men, is not intrinsically illicit: nor are they in a state of sin while they play moderately, that is, without using any illicit words or deeds (that is, shameful ones, or those which tend towards the offense of one's neighbor, as he explains in the body), for play’s sake and not using play for business, and at inappropriate times.... Those who moderate them do not sin.... But if some sustain actors who use illicit plays, they sin, as though they had begotten them in sin. The same is taught in D. tit. 23, §. 44, where explaining those words of D. Thom., illicitis verbis aut facitis, he says: Si cum verbis turpibus, vel actibus turpia representantibus, tunc est

illici- tum et mortale.

See other statements regarding scandal 1. 3. n. 5. 429. — « 9. Cherea, nisi male fine fiant, aut cum periculo alios aut seipsum incitandi ad libidinem, vel cum alia circumstantia mala, secundum se non sunt male, nec actus hibitinis, sed lstitiae. When, however, holy fathers sometimes severely reprove them, they speak of vices and of their abuse. See Caj. v.

Abundance. (Chorea, ut docet S. titulus 6, caput 6, por se licita sunt, modo librum 240, liber 4. Treatise 4. On the sixth and ninth precept of the decalogue: permissible to secular persons, as to honest persons, and in an honest manner, namely, without unhonest gestures.

They also say: precept c. 3, punct. 4, n. 47 and 48, with Azor, Cajetan, ibidem. Sum. v. Chorea: and it probabily agrees with Sporer in matr. c. 3. n. 694. It was forbidden for clerics to attend or at least to lead illicit dances known as chorea.

See . "40. Showing filthy comedies, likewise making or painting books and pictures (4), they sin mortally because they are incentives to lust, since it is certain morally that many thereby are incited to sin. Likewise magistrates who permit that turbid comedies be exhibited teach mortally that they sin. Hurt. And comeod Bald., if they grant authority to them, approve those things, or favor them: yet he adds that they might sometimes be excused, if they do not punish in order to prevent a greater evil, and only tolerate them.

See Diana p. 5. t. 15. r. 82. 430. — « 44. A person who is free and allows himself to be touched by another, when touched, is generally considered chaste according to custom, as prehension, hand-grip, embrace, and kisses according to the manner of one's country, do not sin, unless it be done with an improper affection; for cooperating in this is not permitted. Filliuccius however teaches that even then it is possible to be admitted, so as not to be infamous by touching.

» (Whether, that he may not impart suspicion of infamy, or lest others be scandalized. Thus before Art. 7, Sect. 4, Conclusion 4. R. ad 2. with Sylvius and §. 5. n. 62. with Sa, Azor, and n. 25. Croix lib. 2. n. 249.) "Admittens autem tactus impudicos ut mamillarum et obsccenarum partium vel oscula far- tiva (ut dicunt etiam) et morosa, vel indecentia, peccat: quia præsumitur affectus malus."

See Filius tractatus 30. n. 169. and above in book 2, chapter 4, question 2.

Whether, however, a woman who has been oppressed by force is bound to cry out with another if need be in order to avoid impudent touches? They affirm, n. 63, with Cajetan from common opinion, as they assert; and they prove it from v. 24, where a girl is condemned to death because she did not cry out, although she was in the city.

But very probably he says . 4. Soto de just. l. 5. q. 4. art. 5. et Bon. de VI. prae. q. un. n. 40. cum Iteg. non teneri mulierem ad clamandum cum periculo notabilis damni, sive infamiae, vel nimiae verecundiae; quia tunc, si aliter jam resistat quantùm potest, non tenetur cum tanto suo incommodo vim repellere. ## Caput 2. Dublin 2. Here (1). Receive, if there be a danger of consenting proximately.

It does not hinder the side of Deuteronomy previously mentioned; for the judicial precept was a precept of judgment, pertaining indeed to external judgment, in which it was commanded that a girl who had been violated and had not cried out, when she was in a city, should be diminished; because it was presumed herself (as commented on by Et idem sentiunt Praeterea nemo dubitat quin omnia praecepta judicialia veteris legis jam quindino cessaverint per praecepta judicialia perfectiora legis evangelice ut probat doctus de leg. d. 3. art. 2. q. 4. concl. 4. in fine. It must nevertheless be admitted that, if a woman is in imminent danger of consenting to copulation, either on account of previous experience or because of the fragility and weakness of her nature, she surely ought to cry out for herself to be rescued from such an encounter. An autem mulier oppressa teneatur potius pati mortem, vi repellantio invasorem suae pudicitiae, quam permittere copulam? There are two opinions; as we say in note number 368.

In the negative position, which the Schoolmen hold at 434. —... You ask whether and to what extent touches and looks, etc., are interposed; or even betrothed pairs? • Resp. 4. Conjugalia licent, si referantur ad coitum, ad hoc enim se legitime excitant. Now at the end of the year, for example, if they are performed for the sake of pleasure, they are venial sins: because marriage dignifies them, and the delight in a proper end is not mortal; unless they be accompanied by concupiscences: which, when thus conjoined with them, in that case would be mortal, requiring only such. . 9. d. 46. n. 7. et alii. (see l. 6. n. 932. ad 936.) • Resp. 5. The impure are not allowed to be touched; but those who are pure may touch the parts of the garment, if they intend from them solely a proper delight; although, if I had been present, it would have been different. Chapter number 50, etc., paragraph number 6 and onwards, etc. (But see what is said in book 6, note 864.) ## DOUBT II. ### What are the species of luxury that are naturally complete. 432 Is fornication forbidden by natural law? 433 Does

a woman not offer herself to an indecent encounter out of fear of death if she does not consent? 434 Have their opinions reached this point? 435 Concerning concubinage, there is complaint I.

May one be absolved who cannot cast out the concubine without infamy? 436 Quaer. II. Can one who has been absolved permit a daughter to remain unmarried after having ejected his concubine with disgrace? 437 Quaer. III.

Can a concubine be absolved when she does not depart out of necessity? (1) Nevertheless, distributing the sentence according to what is more secure, from 9. n. 6. . 438 Question NoneIV. Who is in the next occasion, cause for the exercise of the art? What if, even after employing remedies, he always relapses in the same manner? Questio 439.

V. If a servant sins against the master? 440 Question NoneVI. A wife committing a sin with her husband? 441 Question.

VII. Is an occasion to be avoided even with grave damage? What penalties pertain especially to concubinage, particularly for clerics? Is sodomy a special kind of sin? To what is a robber bound? What about adultery? Is copulation between spouses of the same sex considered adultery? Is copulation held to have been performed by engaged persons? Concerning incest, it is queried I. Are all insertions of the same kind? Yes. II.

Does the incest with affines differ? 450 Qu. III. Is there a difference between incest with spiritual cognates? 451 Qu. IV.

Is the copulation with spiritual cognates a special sin to be confessed with the penitent? What if it is his parish priest? 452 Qu. V. Is it incest if those who are neighbors in arms engage in copulation after dispensation? Do merely the touches constitute an incestuous act? How is sacrilege contracted through a turpitudinous sin? Regarding personal sacrilege, inquire.

I. Is a polluted one and a religious one, injuring a chant-like one, committing both kinds of sacrilege? 456 Qu. II. Is one who is joined with another sacred person? 457 Qu.

III. If a person who has taken a vow of chastity commits sacrilege, will another one take it upon themselves to do something vile? What, if he who delays finds pleasure in the sin of another? Regarding local sacrilege, qu. I. An committal sacrilegium habens votum castitatis si inducat alterum, qui

turpia?

Whether there is a sacrilege in an implied connection, or in martial action within the church? II. Are there sacrileges committed by a shameless touch of an unholy person in the church? By what means are they comprehended through the sacred place? III.

Are lewd words and lewd looks, when used in the Church, sacrileges? 462 Qu. IV. Are lewd thoughts sacrilege? Concerning real sacrilege, when does collusion occur? — « Resp. They are called such mixtures as follow this manner: according to the natural institution; for example, when one observes different sequis, and despises the same eadem, vas, et modus naturalis, etc. Hence it is resolved that these following things should be expressed in confession. • 1.

Fornicatio est concubitus soluti cum soluta (idest, quae sit libera a voto, matrimonio, religione) ex mutuo consensu. This is reduced to: 4. Concubinatus, qui est fornicatio continuata. Whereby a concubine (just as a prostitute) should not be ordinarily absolved unless the concubine is dismissed, or a woman suspected to remain with whom would cause scandal, even though no sin was committed with her. . 4. mor. cap. 8.

Naso chapter 3. Fillius tractatus tertius caput duo numerus quinquagies sextus duo. Congress with another's wife, which is fornication within the same species and more grave, and to be confessed; at least in respect to the spouse, as it teaches. 3. 0. 409. t. 4, l. 4, dub. 2, num. 6, l. 4, c. 3. Filt. l. 2. tr. 30. c. 2. num. 52. contra Covarr. - he considers (the opinion) probable both with respect to the sponsa, and in practice, as stated in tract. 7. resp. 5.

- Attend here Prop. 25, condemned by authority: which said: He who had intercourse with a woman who was loosed [from her vows], fulfilled the precept of confession, saying: I committed a grave sin against chastity with a woman who was loosed, without explaining the act of intercourse. Hereafter it must needs be noted that fornication is forbidden by the law of nature, since nature orders copulation solely to marriage, whereby not only offspring can be generated, but also properly nurtured and educated. Therefore fornication is always intrinsically evil, even though sometimes by accident the offspring from fornication might be well educated. Reason; firstly, because in this there lies a great danger of hallucination, easily erring through excessive delight; secondly, because nature considers what commonly happens and not what happens by accident; thirdly, because it is against the law of nature to subject the reason of the flesh to itself on

account of the delight of the act, as happens in fornication.

In marriage however, let the same delectation intervene. However, God disposes by special providence, that such a doctrine be absent. See Rono. de VI. praec. c. 4. q. 2. 433. — Whether a woman sins gravely by not resisting impure congress with another out of fear of death, although she does not consent? Others altogether affirm this, because such immobility would be a kind of voluntary cooperation, since one could impede the congress by some means through action.

Thus Lugo in Disputationes de justitia et jure, lib. 10, n. 197, q. 3, with Fill. Azor, cujus saltem in praxi putavi sequendum. Others indeed deny. See the aforementioned points n. 368. 434. — Whether prostitutes may be permitted?

The first opinion holds that it is probable, and she does not deny it; the precept c. 2, punct. 4, n. 84 of St. Thomas affirms this. Covent. l. 2. de ord. c. 4. Reason, because with the removal of temptations worse sins would come to pass, namely sodomy, bestiality, and fornication besides the transgression of virtuous women; therefore S. says: Remove harlots from worldly affairs, and you will disturb all lusts. But the second opinion, practically more probable, denies it; and this is held in the aforementioned chapter two, question six, number one hundred ninety-five, where it is said there eightieth.

The reason why these evils are not avoided through harlots is because in lustful men, the libido finds deeper roots through easy and frequent intercourse with harlots; and thus, as this vice increases in frequency, they do not cease to commit pollutions and infamous sins, at least with those very harlots, nor therefore do they abstain from tempting honest women. On the other hand, permission of prostitution adds countless other evils; namely, more brothels are established, parents neglect their children, goods are squandered, studies and sciences are neglected, quarrels are provoked, honest marriages are prevented, LCaelerium has observed, noted, approved, P, Sametilin, seeOnetsoulbode, abuse of prostitutes, which, let it be said, in vast areas of the city where they flourish, possess the power to corrupt morals. Thus, permission for one brothel opens the door to many others (improperly, indeed, I use this term); yet, if one does so, he will soon come to regret it. Curie, Romanes, et al., in their treatise on canon law, chapter 8, note that it was said: "It is not advisable to permit concubinage; for it would be more fitting for a man to live alone (improperly, indeed, I use this term); yet if one does so, he will soon come to regret it. Thus, permission of one brothel opens the door to many others in vast areas where they flourish and possess the power to corrupt morals."

X I. 6 4. It can, by some means, abolish in proposal, that which is considered to occur on occasion, with which it is versed, such that it cannot omit it, as it has proposed or as it intervenes. 8 2.

When the occasion of sin is not useful, it should be avoided; but when an opportunity for honor arises, one ought to flee from fleeing it. It is permissible to seek a direct remedy for an occasion of sin, whether spiritual or temporal, either for oneself or for another..... Hence this question arises L. At aliquando possit absolvi concubinarii qui concubinam ejicere e domo non posset sine scandalo aut infimis? In common speech, it is not to be absolved, as Bus. says in the Psalms translated 26, c. 2, pun. 2, § 4, n. 27.

Reason, because in a long-term concubinage it is impossible to remain otherwise and thus make known another thing. They do not deny: yet in some rare case it is possible for him to be absolved; this is done so that in such a case it might completely expedient to at least defer the absolution until the test confirms the continence of the penitent; unless the case were such that (the penitent, having already been sufficiently dispensed with other matters as assumed) could no longer confess sins; or if necessity should threaten the confirmation of caution, in order to avoid positive infamy. 436. — Quaeritur. II. Outside the aforementioned rarest case of infamy or scandal, can a concubine be absolved before her concubinage is dismissed, if she diligently promises to be dismissed?

Others bring forward in the first or second instance, as Diana, Sancia, Megala, and F. according to . n. 28. Others altogether deny even for the first time when there is a proximate occasion. Thus. Azor, n. 34.

Finally, others, in order that. Syllom. . distinguishes thus: If a narius who is publicly known has been condibified, he ought minimely to be absolved, even if he gives signs of great sorrow; unless he dismisses the concubine, or after (the) concussion ## Caput 2. Double two outside the house dwelling during some notable time has not approached to her. Reason, because scandal would thereby be given rise, to see him who still retains a concubine in his house or frequents his house, approach to the Eucharist; and because a public sinner ought not to be absolved unless he also publicly performs penance and satisfies the scandal.

See [it is] stated in book 6, number 542. If however he who is a hidden concubinarius cannot be absolved either; except perhaps in some rare case: for instance, if a noble man sheds tears profusely, or after hearing a terrible sermon, or if he confesses being terrified by the death of his

companion, or if he has escaped a great danger of death. Thus Lugo in de pœn. d. 40. sect. 40. n. 454. et . n. 34. cum . I nevertheless think that this is to be admitted only when it is morally impossible that the concubine can be briefly dismissed before absolution; or when there is a necessity for communicating in order to avoid great infamy, according to what was said shortly thereafter in note 435 at the end.

For otherwise the absolution is always deferred; because experience abundantly shows that, once absolution is obtained, it is difficult thereafter to remove the occasion, and thus easily one returns to the vomit. See to be said 1. 6. n. 456. 437. — Quæritur III. Can a concubine, who is sustained by her concubinarius, be absolved before she departs from that house? They correctly deny it. 26. c. 2. punct. 2. §. 2. n. 43.

They nevertheless receive ibid. n. 44., first, if a serious harm should result from her departure, such as infamy or some other scandal. Secondly, if a woman should refuse to nourish herself by the labor of her hands, or to serve in another household, or to beg without disgrace, or to engage in some other grievous and great necessity. It seems to always bring about great inconvenience to those who are not accustomed to it, as Hurt says at 438. — Question NoneIV.

Whether it can be absolved he who, for a just cause of the art being exercised, is in the next occasion of sinning? Probably they respond. Suff. t. 4. in 3. p. d. 32. sect. 2. Cajet. v.

Periculum, and 39. 46. with c. 3. n. 5. and loc. cit. num. 47: and Innoc. XI. The same is said about surgeons who, in healing women, are in the occasion of sinning. . with . Injury.

The same applies to the confessor who, in hearing women's confessions, willingly place themselves in a situation of temptation: these can be absolved without abandoning their office; but this is not to be said about the simple confessional, which is bound to refrain from accepting confessions, unless perhaps it would incur infamy. . n. 48. cum . ibid. n. 49. cum . If, however, after employing remedies, the sinner continues to sin in the same manner, without any apparent probable hope of amendment, then on no account is he to be absolved; unless either an occasion for desertion presents itself, or special signs of sorrow are exhibited, which can justly be said of the sin. l. 6. n. 457. 439. — Question NoneV. Can servants be absolved when they sin even now, if they have sinned with them also previously?

If they have sinned once or twice, and after an admonition from the confessor they remove the occasion and take care to do so, then they rightly say that absolution can be given. 26. c. 2. punct. 2. §: 2. n. 50. Otherwise, if they have neglected to remove the occasion. ib. Wherefore I would never absolve them if the sin had been frequent, except in a case of grave necessity, as stated above in the question. III.

And they would themselves be sufficiently disposed, according to what is said in book 6, note 459: And even in that I would seek an experiment. • 440. — Question NoneVI. Whether the wife can be absolved, if she herself is in a proximate occasion of sinning with her husband, who knows her against nature or prostitutes her? The response is negative according to note 52 with the Saint.

It is held then to turn aside; but this is to be understood, unless one is morally incapable of doing so, as stated in the aforementioned text. IV. as above. • 441. — Quære. VII. Who is bound to avoid the proximate occasion of sinning with a concubine, even at great temporal loss; for example, if Amasius were in debt to the concubine in a large sum?

They deny it according to n. 57. But on the contrary they decidedly hold that account must be taken more of spiritual damage than of temporal damage, which must be prevented. But this reason, if it holds true here, should also hold true for those previously mentioned chastities above referred to. III. and IV. where the same are to be seen said in book 6, note 455.

But in all these cases it is altogether expedient that absolution be deferred until amendment; see the same work, section 6, note 456. Many useful things are added here concerning this matter. • 442. — I. The Council, in its eighth chapter, imposed the penalty of excommunication to be executed after the third admonition, and furthermore, the penalty of ejection from the city or diocese upon invocation of the secular arm. II.

In this crime, since it involves a mixed forum, proceedings can be conducted both by a lay judge and by an ecclesiastical judge. I. A clericus concubinarius, ex assensu 25. o. 14., post primam nominationem privatur tertia parte fructuum beneficii; post secundam vero privatur pensionibus et beneficii administratione; deinde post tertiam omnino beneficio expolitatur; denique accommodantur, et tunc potest etiam curiae saeculari ab Episcopo tradiri. See 2. n. 66.

It is probable, however, that the cleric who has sinned only once after

nomination does not lose a third part of the fruits (as was said). . punct. 3. n. 64. But it should be noted that under the name of fruits, daily distributions are not comprehended, as was determined by the Sacred Congregation at n. 66. Note 2. The monetary penalties of this crime are to be applied to pious uses by the Bishop. At the end. Notandum 3. quod clericus non privatur fructibus beneficii nisi post sententiam. Numquam autem clericorum concubinarii publici sint etiam ipse jure suspensi?

Asserts Barbos. S. Anton. cites n. 76, saying that they themselves are confined to the state of suspension both from office and from benefit according to c. Sacerdotes, cited 30, and thus declared by the Sacred Congregation on December 5, question 5, article 6. Fill. tr. 27. cap. 7. n. 424. ac. Trell.

Sear. and in the same place those who adhere to this opinion. Reason, because concerning such a suspension it is not certain; rather, the opposite is proven from the cited text where it is said that if a cleric who lives in concubinage does not please with his secondary nomination, he should be suspended by the Bishop from the administration of benefice; therefore, the council implies that no previous suspension has been laid down ipso jure. To the declaration however of the Sacred Congregation they respond, that it is not an authentication; and even if it were authentic, it would have no authority other than what you will approve in the opinion of the doctors, according to what is stated in 1. 4. n. 406. 443. — « 2. Stiprum, hoc est deloratio virginis ipsa invita; quia si consentiat, erit tantum fornicatio simplex, nec circumstantia in confessione aperienda, ut probant 1. 7. dis. 42. contra.

And Bus. and Sanoh. consent therein; before the canon 4, point 4, number 4, question 2, with ibidem number 43, with 1. Diana, quod fornicatio cum virgine consentiente potest esse aliunde specialis peccati, sollicet ratione infamiae vel magnitudinis parentum vel ricarum odii, etc. Vide dicenda de sponsalibus, 1. 6. n. 487. 444. — » 3. Rape, namely when some person (whether male or female, whether married or unmarried) is abducted for the cause of lust by force, whether of the abductor or of those to whose authority he is subject. » (It solicits the parents, or tutors, or husband; but not if they are brothers and she is sui juris. According to Molina.) If however any woman should voluntarily separate from her concubine with the knowledge of her parents, it will not properly be a kidnapping, but flight, adding no distinct malice to fornication. «

Lug. d. 46. n. 437. Vide tom. 7. r. 37. ex 248 Lio. 4. Treatise 4. Of the sixth and ninth precepts of the Decalogue.

Lessio, lib. 2. cap. 19. d. 4. l. 7. d. 4. num. 5. » etc. » A woman is bound to be either taken or endowed; a rapist being held accountable for this, unless the woman be a prostitute, or one of bad reputation. When, however, there is a rape with violence against the woman unwillingly, the marriage is always null and void, even if the betrothal was contracted with a kidnapped woman. They constitute a rape even by importunate entreaties.

Whether fraud also counts? See Salamanca. Ibid., punct. 3, num. 28. See elsewhere regarding marriage in book 6, nos. 1407 and 1408. 445. — "4."

Adultery, quandoque utar etrum vel alterum coniugium est conjunctus matrimonio, etiamsi conjugem adulterantis sit contenta: quia tunc illi non fiat injuria, fit tamen ipsi statui sacramentum et huic praecepto. If a woman guilty of adultery is married, it is regarded with greater severity than if a man were so, on account of graver inconveniences, for instance, harm to the heir, uncertainty regarding offspring, etc. But if both are married, it is yet more grievous, because there are two injuries affecting each spouse, to be expressed in confession. c. 4. n. 85. and 89. Note here proposition 50. damn. ab Innoc. XI. quae dicebat: Copula cum conjugata, consentiente marito, non est adulterium; adeoque sufficit in confessione dicere, se esse fornicatum.) 446. — Qui sodomicie uxorem cognoscit, probabilius etiam adulte- rium committit, quia est contra bonum date fidei, ut lib. 9. d. 18. n. 4. q. 3. cum Azor, etc. prae. cap. 5. punct. 2. num. 15. cum communi contra paucos.

And it should be explained that sodomy was committed with one's own wife; because n. 17. — Whether such a copula with a betrothed woman by words of the future is adultery? Probabiliis negatur cum lib. 1. d. 2. n. 2. cap. 5. n. 14. q. 5. They, however, hold according to Rom. and cap. 4, punct. 4, n. 14, that if one of the betrothed should fornicate with another person, he ought to disclose in confession the circumstance of the betrothal, as altering the species, on account of the injury inflicted upon the other party. However, probable is sufficient according to Lugo, being merely an aggravating circumstance, since by the betrothal the bridegroom acquires no right in the body of another.

See this regarding the mater. l. 6. n. 847. 448. — “5. Incestus, hoc est congressus cum consanguinea, vel affine usque ad quartum gradum, hoc peccatum gravius est, quo gradii propinquitas magis exprimitur; et in confessione saltem curiosius exprimere debetur, ut habet Lugo disp. 16. n. 342. sic etiam incestus cum consanguinea est multo gravior quam cum affine in eodem gradu, v. gr., cum matre quam cum noverca; cum sorore

propria quam cum sorore uxoris; et rursus gravior est cum affine quam cum cognato spiritali vel legali. It should moreover be added that he who was in the first degree, whether with mother or daughter; and whether a stepmother—C. Lugo loc. cit., and Escob. de actibus humanis, e. 2, c. 6, ubi ex iu Hirtius; du 9, de ponit. diss. 4, probabile dicit incestum in eodem gradu; et hinc ejusdem esse specie (eo tamen graviori, quo gradus vel vincius est propinquior), et satis esse dicere habui rem cum consanguinea hinea recta. This species is referred back, as analogous, to confession with a daughter; although there is no proper spiritual relationship, yet the circumstance to be expressed in confession is permitted by Sanchi 1:7 de matr. d. 58.

Conclusion of the third twenty-second [or] decree. Pageand. et caeteri - probabilitie contra Sa, v. Confession, and i - Which is made I. Whether all incests have grades of the same species?

See suitable de 6. n. 476., ubi hoc sat probabilitet affirmatur (excepto tantum primo gradu consanguinitatis in linea recta) cum elyi: Sol. Thom. - 469. - Question. II. Does incest with a consanguineous relative differ in species from an institution with an infidel? Both opinions are equally probable. First, the opinion which denies it, because in both cases it seems to equally offend the due reverence owed to those related by blood. Second, the opinion which affirms it; the reason for this is that it appears to owe totally different due reverence on account of relationship by blood, than on account of affinity.

See to be said 1. 6. n. 469. 450. — Quaer. III. Whether an incestus between spiritual cognates be with respect to diverse spatial relations; or whether it be between consanguineous and affinal relationships? Absolutely it must be affirmed according to 26 c. 5. punct. 5. n. 39 and S. 7n. who in 2. 2. q. 154. art. 10. ad 2. teaches, that by copulation between spiritual cognates a sacred-legal act is committed akin to incest.

But then what is the degree of consideration to be explained? They affirm, however, n. 40; but Croix more probabily denies, n. 1078: Similarly, incest between legal cognates, namely by reason of adoption, ought to be explained as differing in species from others enumerated and should be explicated accordingly. See Psalms. 10. n. 41. - 459. - Quaer. IV.

Whether a confessor, having a relationship with a spiritual daughter through the occasion of confession, should explain this in the confession? The first opinion affirms this, because the father, in relation to the spiritual daughter, contracts some extrinsic familiarity and an obligation to lead her

to salvation, and therefore it seems that he should specially avoid leading her to destruction. Thus, Article 43 with Sot. etc. - Nevertheless, the second more probable opinion denies this with Article 405: Chapter 3: Article 620. Preliminary Article 141. Hez. ibid., tit. n. 669; item etc. apud. . n. 42. The same opinion is held in Book 4, Chapter 250.

Treatise 4. Debilitated and the ninth precept of the Decalogue removed. v. Inquire, 1. in the matter of using. concerning knowledge. Spirit. in 6.

Where. From the clatter of many sacraments (other than baptism and confirmation) there arises no spiritual affinity in any way. Reason which necessitates the bond, while among them there is no earthly kinship; nor any breach of the laws (understand this with regard to this circumstance), since no injury is inflicted by sacrament. Truly however adventitiously. Sinning when such a one is placed, to sin also against justice, when that justice was held fast. Shepherds. Flocks. To pasture, ex.

Erid. Not only by word; but also by example, 452. — Quær, V. An propinqui, obtenta dispensatio ad matrimonium contrahendum, si ante matrimonium fornicentur, incestum eorum minant? They affirm that the Probabilists' Major and the College at n. 1077 state that the impediment of affinity does not cease through dispensation unless only such a dispensation is given as allows those who are thus joined to contract marriage, but not to fornicate. But no less does the probability contradict St. Thomas on marriage, I, 7, d. 67: m. 9, when Cajetan, III, a. 43.

Reason, because a dispensation does not concede fornication, but removes the prohibition of marriage; wherefore, if marriage is not prohibited, there is no incest; hence, with the cessation of the prohibition of marriage, the prohibition against fornication as an accessory ceases. 453. — Note here that all contacts between consanguines of the first and second degree are justly considered incestuous. See doubts following, note number 469. 454. — "6." Sacrilegium, hoc est violatio rei sacrae per actum venerum. The sacred thing, which is thus violated, is both place and person.

Wherefore sacrilege is 4. Every lustful act exteriorly (such as, for example, pollution, and even the probability of impudent touch). I see Luyb n. 1 » 464.) at the sacred place, that is, the temple, or cemetery; unless such a thing be done out of necessity, for example, to avoid incontinence. 2. Every lustful act, whether interior or exterior with respect to persons, or with a person consecrated by vow of chastity, concerning whom it is probable that there is no need to express whether the vow was solemn or simple: just as neither if he be subject to two titles, for example, because

he is a priest and religious: because morally he belongs to the choir of virgins: Sancti de matr. 1. 7. d. 27. n. 27. t. 7. r. 3.

See Card. Lug. d. 46. de penitentia s. 4. Bonii Question 4, Article 17. Esc.

E. 8. For a clearer understanding, I will separate and expound upon the questions concerning this point with regard to sacrilege, regarding the person, regarding the place, and regarding the thing. 455. — I. Regarding the person, it is queried I. A priest, who is also a religious, committing sin against chastity, will commit two sacrileges. 3.

The first opinion affirms; because such religious persons should be preserved in accordance with the reason of their vow: but as for the priest, according to the reason of the Church's precept. Thus. 4. c. 3: dub. 4. n. v. 87. Comm. Ledes. etc. (11) But they deny more truly, the Saints, in the seventh book on marriage, discussion twenty-seven, note thirty-four and thirty-eight.

Paulus Acer, processus cap. 6. punctum 2. nota 9. Rato, quia, quamvis ex duplici praecepto talis sacerdos maneat abstractius voto castitatis, attamen contra idem praeceptum et ex eodem motivato peccaret, dum sacerdos, non jam ex ecclesiae constitutione, ut isti censent, sed tantum ratione voti, sacris ordinibus annati, ad castitatam obligetur, juxta probabiliorum sententiam. See concerning the Order, book 6, number 808. Moreover, even if the obligation of chastity in the priesthood were immediately from the Church's precept, yet by violating chastity he would still sin against religion according to the common Sententia quoted there, because the Church imposes celibacy on its ministers solely for the reason of religion, out of reverence for the sacred Order.

For rightly can the Church effect that the matter of some of its precepts is also the matter of some virtue, as Croix proves in lib. 3, p. 4, n. 57. See regarding this, 4, 6. n. 478. near the end 456. — Question NoneII. Whether a sacred person, having something in common with other sacred things, commits a twofold sacrilege?

Whatever Sa says must be absolutely affirmed with 4. c. 4. n. 84. proc. n. 248. n. 5 cum 457. — Quær III. Does one who has a vow of chastity commit sacrilege if he indicates another to an act of carnal sin for his own cause? It will be approved that what is affirmed in Lugdunum, point 3, number 40. Reason, because (as they say), that very vow of chastity would not induce others to violate chastity by causing harm, unless he himself were set with a positive affection towards lust; and therefore he also

offends against chastity.

But they also sufficiently deny it: Sanchez, dec., t. 2, lib. 5, cap. 6, num. 41, and loc. cit. n. 9, because by emitting the vow of chastity one does not deprive another of chastity, but only one's own chastity. Nevertheless, the first opinion seems to me more certainly probable, if he by a positive affection induced another to sin against chastity; otherwise, if it were for some other wicked reason. But it must certainly be held with numbers 42 and 44 against a few, that religious superiors who would derive delight from another's carnal sin, or who would defile another even by their own hands without deriving any delight thereof, commit sacrilege undoubtedly. 458. — II. Regarding the place, it is inquired I.

Whether a public or secret vow made in the church, or without any other fault, is sacrilege? Preconception, quod ex uno universali de consentiente. The Church is in the sixth and eighth place. In the twenty-first chapter, in the fourth question on consecration, it is prohibited the voluntary effusion of blood or semen; by which (provided that, the effusion be a mortal sin and sacrilege), the Church remains defiled until it is blessed again.

But it is doubtful, what kind of effusion suffices for that? There are three opinions, all sufficiently probable, as rightly stated in c. 45, punct. 5, n. 64, at the end. The first opinion holds that after the removal of the scandal, there should never be a sacrilegious copulation, just as there should be no effusion of blood out of defense; because the aforementioned law, since it is penal in nature, must be strictly understood, namely only of illicit effusion. Thus the Glossa on the Decretals concerning churches, chapter 20, verse.

Seminæ says this according to Pope Hyginus in c: 49 antecedent, where it is stated: If the Church has been violated through homicide or adultery, it shall be purified. Pontius from the matter of the matrix, book 40, chapter 40, note 43. Sa v. The Church n. 14. Likewise Alensis, Rosellae, and the law distinguish in their second opinion, saying that indeed sacrilege is committed, and the Church is polluted through public effusion of blood or semen, not however through secret effusion, namely when it is known to no one; or at most to two or three.

Thus Glossa in the cited chapter one of consolatio in six volumes. If it has polluted: If the pollution was secret, the Church ought not to reconcile; for the theologians say that the Church is reconciled as if seeing the Church wash itself, they consider how much effort should be expended in the washing away of sins. Moreover, Pontius loc. cit., n. 9 (calling it common),

Tolet. l. 45, c. 8. Save it.

The Church, n. 49. 27. n. 230. Azor, treatise 4, book 40, chapter 26, question 3, and Vasp. Connection. d. c. 45. n. 63. et 64. Reason, because, as they say, such an effusion is not sacrilege according to divine law, but only according to ecclesiastical law, by which alone public effusions seem to be prohibited, since it is merely through this that reverence due to a sacred place is removed in the opinion of men; and at least on account of the authority of so many Doctors they consider this judgment probable. n. 65.

They nevertheless note that, for an effusion to be considered public, it is sufficient if it is made manifest by words, or if a man and a woman are seen lying in the same bed together. The third opinion holds that a sacrilege and the pollution of the church are committed even through a hidden marital bond, unless it be done out of moral necessity. Reason, because the cited text speaks universally about any effusion, and thus is more rightly understood; for even through a hidden or licit conjugal union, a grave injury is done to the Church, and it itself is more probingly polluted; although, since it is a hidden crime, there is no obligation to abstain from divine offices. Thus. l. 9. d. 45. n. 42.

Bon. de matr. q. 4. p. ult. n. 6. Holzma. de sexto principiis n. 667. Cross L. 6. p. 2. n. 1074. n. 65. et 66. cum . Sylv.

They, however, opine that spouses are then in moral necessity, when they are in danger of incontinence, or when they should remain for a long time in the Church, namely for forty days, as some think; others say twenty days, and others, however, a month. And in the case by which conjuges judged themselves to be in moral necessity to remain in the Church for a month, even from the beginning they can cohabit. Ita ibid. n. 67. et 68. cum aliis.. 449: — Quaeritur II. Nam etiam si sola tactione impudicorum in Ecclesia habitaverint, sint illae sacrilegia?

They deny that many Doctors, namely, chapter 1, section 9, decree 48, note 24, when removed from danger of pollution with Cajetan; the reason being that such touches do not violate the Church to such an extent as to impede divine offices, and thus the reason for sacrilege ceases. But more probingly they contradict in Elbe div. sacril. n. 576. and proc. n. 724. Item Sylvest. apud c. n. 45. Reason, because the touch of the unholy has the same malice as the very union itself, and thus they are sacrileges not on account of the violation of the Church's statute made pollutable solely through defilement, but on account of grave irreverence which is imposed

upon a sacred place: for pollution does not make the Church a sacrilege because it is polluted; but rather the Church is polluted because pollution is a sacrilege. 460. — By the sacred place is understood every place blessed by the Bishop and appointed for divine services or for burying the dead, from the roof to the pavement.

Cellae, claustrum, sacristia, dormitorium, tectum supra ecclesiam, janua extra limen ecclesiae, atrium autem non comprehenduntur. Thus also in 70. and from the VIth processio chapter 6. paragraph 4. section 2. note 27. et seqq., it is stated that even private oratoria do not come, unless they are erected by Episcopal authority, as is customary in hospitals, because then they are true churches, and there all may hear mass, according to . tr. 48. cap. 3. paragraph 3. section 4. note 87. et seqq. Euch. 1. 6. n. 357. et 359. 464. — Quaeritur III. Are lewd words and gestures considered sacrilege when used in a church?

Three opinions are equally held. The first [authority] says that all external acts, even those slightly disgraceful, performed in the Church, are sacrileges. Thus Sylv. and Cordub. in the processus at caput 6, punctu 4, sectione 4, nota 20. The second sentiment condemns as sacrilege only those seriously vile external acts.

Thus 1-9 d. 45 n. 20. and n. 21. with the Third Sententia, which is held as cited in n. 49. proc. n. 724, calling it common, and as certain elsewhere they follow c. 45 punct. 5 n. 68 at the end (although here they contradict themselves), denies such acts to be sacrilegious, whether lightly or gravely turpulent. Reason, because such colloquies or repugnant aspects, even if they include licentious kisses (which are always encompassed by the danger of pollution), although they are mortal and morally deformed acts, nevertheless do not contain in themselves a grave physical deformity contrary to the due reverence owed to a sacred place. Nevertheless, I think that the second opinion is absolutely more probable. 254 Lib. 4. Treatise 4.

Of sect and ninth precept of the Decalogue. 462. — It is inquired about IV. Are there sacrileges in thoughts base and vile held in the Church? They correctly distinguish, as stated in the preceding chapter 6, point 4, section 1, note 24, with Soto, eto. They affirm that if desires for external sinning are deliberated in the Church, even though they are considered outside the Church according to the aforementioned, this is commonly held according to chapter 4, number 43, with Father Salmanticus.

Accordingly it should be said, if desires for sinning are outside the Church, contrary to 463. — Hf. Regarding sacred things; it is also sacrilege to use

sacred things for a wickedly sinful act, hence whoever defiles himself attired for Mass commits sacrilege, etc., according to the aforementioned point 5, n. 37. It is doubted whether a priest, while carrying out the Sacrament of the Eucharist, commits another sacrilege by sinning either externally or internally against chastity? They commonly affirm . c. 7. n. 12. and n. 36. with others.

Reason, because holy things should be handled holy. But see what is said at l. 6. n. 35. at the end of the volume. Very much. Thus they also speak alike with Lug.

Nonetheless, one does not commit sacrilege by committing sins while carrying religious vestments or waxen lambs; nor if one were to give those as a donation with the title of amasiae. Thus likewise if he gave in exchange for a sin; for then it would be sacrilege and simony. And 39. with Azor and Fill. Is however a carnal sin committed on feast days, and would that be sacrilege? Some affirm it; but it is denied with greater probability according to . 3. praec. c. 1. p. 14. §. 4. n. 248., because the end of the precept does not issue from the precept.

See what is said in this book, chapter 4, number 46 and 273. DOUBT BL. What are the species of luxury completely contrary to nature? 451. What concerning the congruity of nature? 452.

What concerning softness? 453. What is imperfect sodomy, and what is perfect sodomy? 457. Is a pollution to be considered an act of species when it is committed by touching a boy or a girl? Whether in sodomy there is an aggressor, if any part was used; or a sufferer? 459.

Whether sodomy adds a senseless peace to insensible ears? 460. Where are the penes of sodomites? What is required to incur them? And whether clerics are subject to those penalties?

Is it possible to incur them even before the sentence? Is it necessary to doubt that others might examine them before judgment? 474. What about the penalty of excommunication? 475. On sin against a demon: What if the demon represent the person of the nuptial sacrament, etc.? 464.... « Rssr.

Cum contra naturam dicantur ea in quibus fit seminatio modis repugnantibus institutioni naturae, ita ut iuxta talesmodos species varientur, line, resolvitur, tales species esse sequentes: « 1. It is an inordinate congress, that is unnatural or undue; thus according to such a mode it is resolved: when indeed the identity of the species is preserved,

the diversity of sex, and the due organs of nature are observed, but only inordinately does it accede: for example, when a man lies with a woman, either from behind, or on one side, or standing, or sitting, or by some other manner; which is contrary to natural law, when thereby there is danger of impeding generation, or the emission of seed: otherwise, if this danger be avoided, or does not exist, inasmuch as the matrix sufficiently attracts and retains the semen, as often happens, it will not be against nature, but beyond it, and will be venial and grave, nay rather no sin at all, if a grave cause is present; for example. » because the woman is pregnant, or because the disposition of the body, whether of her own or of either spouse, does not permit otherwise. Chapter 8. Question 8. Number 137.

See what is said concerning the maternity in the sixth book, number 917. 465. — “ 2. Mollities, sive pollutio, et est cum, absque congressu, seu copula, voluntarie procuratur fluxus seminis, sive ut foras effundatur, uti in maribus, sive intus diffuatur in matricem, ut in feminis. » And this sin, besides its own malice, often has another joined to it, for example, that of fornication, adultery, incest, etc., when one imagines and desires congress with some free person, married person, etc.; which accordingly, if committed, should be disclosed in confession. Many regarding mollities can be seen in the following doubt. 466. — « 3.

Imperfect sodomy, et est congressus cum debito quidem sexu, maris nempe cum femina, sed extra vas naturale. It can also simultaneously possess other vices, for example adultery if it is committed with one's wife; incest if it is committed with a consanguine relative. p. 14, n. 4. « 4. Perfect sodomy, and it is a congression between two of the same sex, such as a man with a man, or a woman with a woman; and it can also have other adjunctive evils, for example incest, in which case it involves kinship, which the gloss does not necessarily explain explicitly, chapter 2, canon 6. But it is sufficient to say that I have cohabited with a consanguineous person or an affine; because neither flesh is mingled, nor is affinity contracted, nor does the line vary in species.

Thus he says: it must be explained whether you were the actor or the sufferer, says C. Lugo d. 16. n. 423. contra. 2. t. 4. de saer. r. 189. et p. 6. t. 6. r. 36. The great question is: In what act does sodomy consist? Others hold that it consists in cohabitation for an undue vessel? others in cohabitation for an undue sex. Both opinions are probable, and in both opinions there is perceived a special deformity which sodomy has against nature, which requires that both be preserved for generation, namely the due vessel and the due sex.

They hold, however, that sodomy consists in congression to an undue vessel. Henr. Cov. Let us.

Layman. Llamas, and commonly jurists generally at the aforementioned chapter 7, section 4, paragraph 5, number 84. Hence they say, that he commits true sodomy who has carnal intercourse in an inverted manner with a person and even of a different sex. The second opinion, however, more probable and common among theologians, holds that it consists in congress for an improper sex.

Thus S. Thom. 2. 2. q. 154. art. 14. in corp. . 4. c. 3. dub. 43. n. 89. . praec. n. 676. . 263. ac . n. 82. cum Sa, Azor, Bon. Caj. and others besides. Reason, because true and proper sodomy is committed in contact with a person with whom generation in no way can occur. Hence it is inferred that true sodomy consists in sexual intercourse between women, as stated by S. praec. c. ult. q. 4. de matr. c. 3. n. 626. n. 80. with citation of the aforementioned chapter n. 2174. such a kind of concubinage, even when performed with an improper intention towards the male, does not appear other than as sodomy improperly so called, since between women a perfect union cannot be formed.

It is inferred that II. true sodomy consists in any concubital act, whether of bodies or conjunction, performed with a person of the same sex, either in an improper vessel or in some other part; for then there always exists, speaking properly, the affection directed to an improper sex, as they hold . n. 64. c. dec. praec. art. 6. sect. 2. Croix lib. 3. p. 4. n. 940. et l. 6. p. 2. n. 1082. Hence they say, ibid. n. 87. at the end, against Graff., that it is not necessarily to be explained in confession if the pollution was within or outside the vessel (1), for it suffices to confess, "I have sinned with a boy," so that the confessor may judge whether sodomy occurred with pollution. If, however, pollution did not actually occur, it should be explained.

It is stated in III. cum. n. 82 and according to the more common opinion, coitus of a man with a woman within her vessel is only imperfect sodomy, distinguished in species from perfect sodomy, as they say in number 74. Who notes n. 64 with Fill. and rightly consents thereto and according to common opinion, as he asserts, that if a man should copulate between the thighs, arms, or other parts of a woman, there would be some kind of inchoate union, at least in intention. Whereby, according to this doctrine, a man commits two sins by lying with a virgin outside the part: one is fornication in intention, and the other is against nature in execution, both contrary to the same chastity, but of different species. They say, however, both before mentioned and with the Angel, that the confessor, understanding that a woman has been known outside the natural place or

in an improper manner, ought not to inquire where nor how.

But Sporer affirms that pollution in the mouth is of a different species, n. 637. with some among . But they more probabily say, Tr. 30. n. 155. with Cajetan. Graff. etc., quod si vir polluitur in ore feminae, erit copula inchoata, ut supra; si vero in ore maris, erit sodomia. What, however, is the sin of copulating with a dead woman?

It must be said that it is neither bestiality, as some wish; but rather a pollution and an affective fornication. Whether, however, touching a sleeping boy or girl, one incapacitated by fraud, or the parts of beasts without coitus, constitutes a different species of pollution from simple pollution, is doubted? The first opinion affirms and states that such pollution with a boy is sodomy, while with a girl it is an incomplete copulation. Thus also concerning the sixth processio, chapter seven, point two, number nine. The second sentiment indeed with Cajetan 2:2:q.454, art. 14.

Azor, lib. 3, quaest. 3, cap. 23, Question 4. Bonac. de matr. q. 4. p. 10. n. 45. et cum . Sayr. Reason, because when cohabitation is absent, they say that it has a material aspect in that pollution can occur through one's own or foreign touches.

Then it suffices to confess: "I have had pollution through contact with another's thing." For when coition is absent, there is no affection for sexual intercourse, but for pollution; and this is more probable. Hence it is noted in the processions of the seventh question of the sixth article: with Bonaventure, that if one is polluted through alien touches, it is not necessary to explain whether through touches of a man or of a woman; because since pollution then takes place solely thereby, it also has a material aspect, whether touches of a man or of a woman occur. Nevertheless, it must be said that if conjugal touchings were made, or a vow of chastity was held. 468. — Doubt arises: whether sodomy is to be reckoned as a sin, if one were the actor or the sufferer?

They deny it. Chapter 7, point 5, § 4, no. 87. For it is more correctly explained according to chapter no. 2, page 43, and no. 86. Because pollution is much more readily found in the agent than in the patient. 469. — Dubitatur 3. an sodomia inter consanguineos aut affines addat speciem incestus? Three are the opinions. The first universally denies it when they follow with some among Diana, according to Book 4, Chapter 253.

Treatise 4. It seems regarding the sixth and ninth commandment of the

decalogue; because they say that incest is committed only when there is coitus in a vessel with the mixture of bloods. But this does not seem sufficiently probable. The second opinion, which Bonaventura of Bagnoregio holds in his work on Marriage, p. 4, punct. 11, n. 40 and 44; and Azor in his treatise, tr. 26, c. 7, punct. 5, §. 2, n. 90, says that sodomy between relatives within the first and second degree is indeed incest according to natural law, whereas it is not considered such a relationship between those within the third and fourth degrees of kinship, which is prohibited only by positive law in relation to man and woman with regard to marriage; hence they say that sodomy which does not indicate an order toward Marriage is not forbidden by positive law among such relatives on account of the degree of kinship.

Third opinion, which I consider more probable according to nos. 345 to 354 c. art. 4 quor. 2. Ovoix l. 6. p. 2. n. 1082. cum Sylo. et Graff. item ibid. n. 92. docet, omnem colitum, sive naturalem, sive innaturalem, interpropinquos usque ad quartum gradum, sive sint consanguinei, sive affines, sive sint cognati legales, sive spirituales, induere malitiam incestis. Reason, because according to the law of the Church reverence and piety are already due to all these; and if this is defiled by natural affection, so much more by unnatural affection. Thus also he who is defiled by touches from one related to him in the fourth degree was called an incestuous person.

The same must also be said regarding other acts of immodesty in which the species of the person involved must be explained, whether it is consanguineous, conjugal, etc., according to c. art. 7, sect. 1, o. ibid., who assert that this is common. It must be noted that it is certain and to be explained in confession whether sodomy was committed with violence, or with a person bound by a vow of chastity: furthermore, if it was committed with a spouse; because faith in marriage demands that a husband not divide his flesh with others. According to number 98.470— regarding the penalties for these crimes, those who are aware of sodomy are condemned to death and burning according to civil law, and according to canonical law by the Bull of St. Pius V, among canon 26, chapter 7, point 6, section 1, note 107, both clerics and religious laity exercising this dire nefas are deprived of all clerical privileges, office, and benefice by the authority of present canon law. And furthermore, the Sacred Pontiff commands that they be delivered to secular authority. 474. — Here several questions are raised, concerning which, for brevity's sake, we deem it more probable that they should be required to incur the aforementioned penalties: I. That sodomy may be considered consummated with pollution within a vessel, as (contrary to Laguna) the Rones hold in VI. prae. c. ult. y. 5.

Bon. de matr. q. 4. p. 4. n. 2. n. 749. item. Fill. Azor, Dnr., cum § 2, n. 409, et communis; nam lex poenalis semper exigit, ut crimen sit perfectum et consummatum. H.

That you may be seated with the sea; for the coitus sodomiticus of the sea vomits feces, and it is not true sodomy, as Azor, ibid., n. 444, against Lees and Garcia. Here probable is noted. n. 442. But if it is reserved against nature, then according to Secus. Whether, however, under a reserved sin against nature, pollution is to be understood? It seems to be comprehended by itself; but in conclusion, concerning what pertains to the penalties of clerics, that the act of sodomy is frequent and either vomited up in use, as Navarr says.

This word, therefore, obtains its meaning from those who exercise it, as was expressed above in Balla. Thus Ben. num. 2. and n. 442., together with the common opinion, against: But more is doubted whether clerics, suffering sodomy, incur penalties? They deny: ibid., n. 446, because they say that the word 'exercentes' properly signifies action, not passion, and this seems sufficiently probable. They, however, hold that it is more probable to consider it as contrary with merit: namely, because even those who suffer are participants in true sodomy; similarly to those who commit fornication through a adulterer's penis, although they are merely passive, they are not excused. 472. – Doubt arises whether the aforementioned penalties are incurred before the sentence?

The first judgment affirms, because the Pontiff says: "We deprive by authority of the present Canon." Thus translated text 26, chapter 7, point 6, section 3, note 124. The second sentiment, however, is more accurate and common, and it denies as stated in no. 249. t. 5. d. 34. sect. 4. n. 22. Bonaventura de materiis, quaestio 4, p. 44, n. 3, caput 2, caput 29, n. 63 et n. 425 cum tractatus 41, caput 2, punctu 3, § 2 ex n. 52: nullam poenam, privans aliquo jure acquisito, incurrit nisi post sententiam, quamvis in lege ipso facto exprimatur poena.

But, even though it is said there: "To none expected judgments": for then at least a declaratory sentence of the crime is required. Reason, because it would be too severe a laxity that those themselves should exact punishments before they were condemned by a sentence. See what is said at l. 4, n. 148, 473. — There is doubt whether a cleric, exercising bestiality, incurs the penalties of sodomy? They affirm Quaranta, cited tract 26. note 128.

Because, as they say, the penal law should also be extended case by case when the same reasoning applies, and the crime involves a serious malice, so that it would be such in this case. But it must be opposed to what P. Concina says in c. 5, n. 429, namely, that it is not truly the case that in penal law, which depends not only on the reason of the law but also on the will of the legislator; therefore, an argument from parity does not hold there. Bestialitas, quod est gravissimum inter omnes, et est congressus, in quo non servatur identitas speciei; v. gr., si homo coeaverit cum bestia, sive ejusdem sexus sit, sive non. » (Bestialitas is a graver sin than sodomy, because not only is the debt of vessel or sex not observed there, but neither is the debt of genus.) Neque est necessarium explicare qualis sive cujus spe ciei fuerit: quia differentia est tantum materialis et in genere entis; non autem formalis et in genere moris. «

Escob. e. 2. cap. 6. tr. 30. c. 7. n. 434. This is common with numbers 140 and 260 with Hanno, etc. But there is doubt whether it is necessary to explain whether that beast was male or female? Croix affirms in lib. 3, p. 2, that (as he says) morally diverse is the deformity of congress with a beast whether male or female. But commonly (this is admitted in the same [work], before, article 6, section 2, note 3.

Fill. tr. 30. c. 8. n. 464. 7. c. 8. §. 5. n. 4. Felix Pot. de praemio n. 2182. Azor, lib. 3, cap. 22, quaest. 3. Renzi from the sixth part, chapter eight, question forty-six, with Graff. and de Januar.

Reason, because the entire essential deformity of this nature consists in access to a different species; hence, the circumstance of sex is altogether accidental and involves no difference in the genus of morals. However, the touch with a beast, although it is not properly speaking a sin of bestiality, nevertheless has some special turpitude, as he says in c. 475, saltem venialem: "Sin is recalled to bestiality when it is committed with a demon, whether succubus or incubus: to this sin is added malice against religion; and besides, also sodomy, adultery, or incest, if there be an affection of man or woman in a sodomitical, adulterine, or incestuous manner with a demon." See Bon. de matr. q. 4. p. 42. n. 3. Tactus autem impudici cum bestia, licet non sint propriè pec- cata bestialitatis, tamen habent aliquam specialem turpitudinem, ut ait . c. saltem venialem. 475. — “Ad bestialitatem autem revocatur peccatum cum dæmone succubo, vel incubo: cui peccato superadditur malitia contra re- ligionem; et præterea etiam sodomiae, adulterii, vel incestus, si » affectu viri, vel mulieris, sodomitico, adulterino, vel incestuoso » cum dæmone coéat.”

number 162. Benè says according to Busemb: that congress with a demon is reduced to bestiality, as they also say in c. 262 with Bonac. and with

Cajet. Azor et . An alioqui, qui coit cum dæmoni apparente in formâ conjugalis, monialis, vel consanguineae, peccet semper affectivè peccato adulterii, sacrilegii, aut incestus?

It seems to universally affirm, but very probably it should be denied, that he who lies with a woman represented by a demon, not because she is married or consanguineous, but because she is beautiful, according to the opinion of Lugo, unless the circumstances of the person enter into the delectation. See l. 2. n. 45. DOUBT IV. May it be permissible to seek pollution at some time? Is pollution forbidden by the law of nature? Is voluntary distillation mortal? May it be permissible to expel corrupt semen? Are we bound to hinder an unavoidable pollution? May it be permissible to desire pollution for a noble end, or to take pleasure in it? What if pollution of centuries is foreseen from a good action?

What if it arises from an illicit matter? Certainly a mortal pollution is born from a dishonorable cause greatly influencing it. What if the action is taken for a just reason? For example: to heal oneself, to hear confessions, or to do something according to custom, etc., and secondly, to relieve itching. III. ad equitandum. IV. ad decumbendum aliquo situ. V. ad moderate eating, etc. What if the surgeon or the parish priest had consented to such pollution on several occasions?

What about the simple confessional? And what if someone should almost always fall? Is it a mortal pollution arising from a cause influencing to that effect frequently? What if the cause is of the same genus of luxury? And if the fall has been frequent? What if the cause is in another genus?

Is there at least a suspicion to lay hold of it? Concerning the pollution following in sleep. Does much pollution have a different malice? 476. — R ESP. By the authority of Scripture, which excludes from the kingdom of heaven those who are tepid. The Corinthians 6 teach all that it is never licit to intend or directly seek softness in any case, nor even for the cause of health and the avoidance of some certain death.

The reason is given in Decretals 9, d. 47, that nature denied to man the administration of the seed outside of marriage in every circumstance, because so intense is the sense of pleasure in this matter, that men, being consumed by passion, everywhere easily persuaded themselves that they had a just cause for angering the seed, whence many and most serious vices against the common good, and in hindrance to generation, emerged. Here advert: 4. before all things, proposition 49, condemned by Innocent. XI. quae dicebat: Mollities jure naturae prohibita non est: unde, si Deum

eam non interdixisset, saepe esset bona, et aliquando obligatoria sub mortali. This has justly been condemned; for if fornication is evil because it is contrary to the upbringing of offspring, pollution is an even greater evil, because it is contrary to the generation of offspring.

Observe that the pollution of slaves and children (although they do not have perfect semen), makes no difference from the pollution of adults. Take note 3. that all pollutions in themselves are of such a kind, whichever way they may come to be; if they come to be without coition, as Azor says, p. 3, 262 Lib. 4. Treatise 4. Of the sixth and ninth precepts of the Decalogue. 1. 3. c. 21.

Bonac. on Matrimony, Question 4, Page 40, Number 45. Anaclet on 6th precept no. 49. See what is said in note 467. It is said in itself, because on account of the circumstances other kinds of malice can be added, specifically: if a priest is polluted, sacrilege is added; if married, adultery is added; if with another person with desire to sin, malice according to the quality of the desired person is added; likewise, another kind of malice is added if one defiles oneself by delighting in imagined coitus with some woman, or a married or divorced man, according to what was said in 1.2 n. 45.

Moreover, if one is defiled through foreign touches. 477. — « 4. Distillation, quae est furtus humoris quasi mediìi inter urinam et semen (quocum coloris et viscositatis similitudinem gerit) sine ingenti illa delectatione, non est vera pollutio, et si proveniat sine omni commotione sensus veneri, ut quandoque fit, de ea non magis laborandum quam de sudore dicit Cajetan. If however it occurs with carnal sense and movement of spirits serving generation, then to cooperate with it or to provide a cause for it, is neither, or it is a sin; that is, whether venial or mortal, in the same manner as concerning pollution it will be said. . 9. d. 45. n. 32. . 3. t. 4. n. 18. It is asked whether voluntary distillation is a mortal sin?

To be distinguished: si ipsa contingat cum notabili commotione spirituum, procul dubio est peccatum mortale; quia talis notabilis commotio est pollutio inchoata. And likewise to be said if the distillation be in great quantity, because such notable distillation cannot be without notable rebellion of flesh; whence, as he gravely sins who procures a notable commotion, so also he gravely sins who procures a great distillation. Thus. l. 9. d. 47. n. 47. et d. 45. n. 44. Sporer eod. tit. n. 659. prae. n. 259. tit. n. 692. 7. c. 3. §. 5. n. 53. et alii communiter.

Hence we are held under a grave obligation; not only directly to avoid

such distillers of this kind, but also indirectly, by avoiding all proximate causes influencing them, in the same manner as we would speak about the pollution infra num. 484. If however the distillation be in a small quantity, and without delight and agitation, then we can permit it without sin, as Cajetan and Margunius say at 9 d. 45 n. 2 prae e. 7 punet 2 n. 35 with Thomas Aquinas, because such a flow is no more to be regarded than the emission of anyone's other excrement, from which nature seeks to relieve itself: Of which (as q. 4 § Animadverte) unless it come through the rebellion of the flesh, it seems no more to be regarded than sweat. Moreover, it is said in the aforementioned article 6, section 4, verse v. Here incidentally, with Henry from Saint Ignatius.

But. They say that it is permitted even with slight movement of flesh. However rightly it is noted in no. 35 at the end, and Bonaventure consents in question 4 of the treatise on the Maternity, article 8, number 47, that di- ## Head 2. Debitum quarto pestis, et datâ operâ procurare quam omne distilatum, etiam leaven, male modo potest exsusari a poceste mortali; quia vererât quascunque distillatio semper, vel ut plurimum, secum fert aliquam commotionem, et aliquantulum seminis effusionem. 478. —.... 8.

If semen were to be so vitiated by the judgment of physicians in the matter, that it could be expelled by certain medicines, even though this is contrary to intention, some seminal corruption would nevertheless ensue. Sancia, dematr. 4. 9. d. 17. a. 4. 16. fil. t r. 30. c. 8. a. 450. frul. 1. 1. e. 1. d. 8. 5. 1. They do not admit this judgment, a. 47. et Rone. sed. tit. c. 4. 4. 8. because (as they say) it is impossible to expel that which is corrupted in such a way without simultaneously emitting the true seed; furthermore, because other remedies are not lacking for healing the corporeal seed, and thus there is no need to expel that. But common Doctors accept this sentiment of our Blessed Father Bernard.

Reason, because those medicines per se directly solely finally are expulsive of corrupt semen; yet the emission follows accidentally something of true semen, and besides intention, which cannot be called illicit, since all concede that loitum are other remedies to expel noxious tumors, although pollution follows accidentally, just as it is permissible for pharnex always to be used against disease, even though it is indirectly expelling the festus; namely (jointly with the common sentence, report from a. 394. Question 1.). Ita Sancb. 1. 9. d. 17. n. 45. et d. 45. n. 9. 643. Transb. 1. 7. c. 7. 8. 2. n. 8. Anacd. de sexto praecipe n. 47 ipsum 10 n. 41 translatio 49 recte 55.

Cross 1. 3. p. 1. a. 926. cum Ilynn. hanc secundum sententiam alias probabilem cen-seo, medi tamen 1. semen certe sit corruptum, non vero si dubie. 2. The expulsion of a corrupted seed is posited as occurring without

itself. Of himself, according to the libido, as he well observes. Anacd. 8. alia: nam sint remedia ad semen corruptum medendi dum; numquam tamen est hortum tactu semen corruptum expellere, etiamsi abest periculum consensus; sic tenendum omnino cum Sporer a. 643.

Cross 4. c. n. 936. with Lym. n. and Fano. d. 15. 1. n. 8.) The reason is, although permission for a medium may be granted, it is only permitted to tend from itself to expel the corrupted semen in a manner that is somewhat acceptable; nevertheless, the multiplication is to be allowed; because this tends from itself to stir carnal spirits; and the true semen to be expelled, which is never permissible. Hence the most wise and pious Sanchez, although he previously held the contrary in his treatise on martyrs., nevertheless in Decretals 4.5.a.6.n.42 did not hesitate to correct himself. Whether it is permissible to use a medicine to crush the true seed and afterwards eject it restored into the blood, or another man? Sporer denies it n. 643 with Biena, because (as he says) this is repugnant to the seed: instituted thus.

But for this to be permissible, it should be set forth in Sancb. d. 9. d. 47. n. 45. n. 48. Anacd. a. 47. Dionysii qu. 3. stc. Reason, because the birth of a child does not obligate one to preserve the seed with danger to life: for it is permissible to support the testicles in order to safeguard life, although man would be entirely rendered impotent to generate without them; why then would it not be permissible to corrupt the seed? 479. — « 3. He is not bound (provided that there be no danger of consent in lust, nor voluntary promotion thereof) to prevent pollution by his own spontaneity, whether to repress it spontaneously occurring, or already commenced, for instance, during sleep; but he can allow it for the sake of health, so that nature may relieve itself: because this is not to procure, but to suffer, what, otherwise corrupted, would harm health.

Whereby he himself admits it; and withdraws a further consent, adds that it is generally expedient, fortifies himself with the cross, and, without any other effort, beseeches God by hands of peace, that He may not permit a stumble into delight. Sanches d. 47. num. 47. . 6. c. 4. d. 40. When pollution begins during sleep and emission occurs in a semi-full state of vigilance, then if a man experiences any pleasure that is not fully deliberate, he does not indeed sin except venially, as rightly noted by S. 6. c. 5. in fin. n. 8. v. It is not. For precedent chapter 7, point 4, note 74, and Concina note 48, and it is evident from the aforementioned statements in book 2, part 3, and 5.

When however the omission began in sleep, but was subsequently completed in full wakefulness, in that case (provided there is no consent in

the delectation, or the near consent a danger from past experience), it is not held that man must restrain that; for then it is most difficult to turn aside the outcome of the seed already departed from the loins, as commonly the Doctors say in the end of chapter 9, part 47, note 46. Conc. l. c. . n. 657. Holzrn. de 6. praec. n. 688. . 7. c. 7. §. 2. n. 47. et alii communiter; tunc enim non vult illam pollutionem, sed merè patitur. Nevertheless Gerson warns in Alph. 38, l. 3, prop. 9, that in such a case, for the execution of virtue and the avoidance of danger, it seems expedient that man strive to prohibit what he feels able and conveniently can be done.

Saltern (dicendum cum 480. — « 4. It is licit for the sake of a good end, such as the diminution of temptation, health, and tranquility of the soul, to desire spontaneously and natural an unburdening of nature; provided that this desire not be a cause efficacious of pollution. And they consider this explanation more probable, n. 75, with St. Anthony: because the object of this desire and joy is not evil; (And thus S. [i.e., Saint Thomas Aquinas] in title 6, chapter 5, at the end, understand, as he notes in Reg. prae. n. 40, pollution did not arise from an impure sleep, or from a personal touch, as we said in lib. 2, n. 20. But always it is lawful to delight not from the cause but from the effect pursued, namely from exoneration; see ibid.) although such simple desires are considered inutilitarian and lacking no peril, some well observe them. . 44. num. 45. . 47. 481. — 5.

If anyone, about to perform some necessary act, or one that is licit and honest, foresees a natural consequence thereof (and this is much more applicable to distillation), yet he does not wish it at all nor intends it; then, provided there be no danger of consent in the delight, he is not bound to abstain from such action, because the effect is not imputed to him by chance and beyond his intention. Hence, notwithstanding the risk of pollution, it is permissible to hear the confessions of women, to study cases of conscience, to touch oneself out of necessity, to converse cautiously and out of necessity with women, to kiss, and to embrace according to the custom of one's country; otherwise, such behavior would be considered uncivilized. That is why, if there were a danger of consenting to delight (which is gathered from the fact that he has frequently fallen mortally in such similar occasions for this reason), even on account of what is licit, 'he would have to abstain; therefore, in such a case, the confessor was bound to resign his office. Fill. . 9. d. 45.

However, it is indicated at . 482. – 6. If pollution is found to follow from an illicit, idle, or less necessary act, and this be a proximate cause, and naturally ordered to venery, such as are lewd acts, touchings, looks, readings, hearings, and foul speeches, it is mortal not by abstaining from

them but by consenting to them: because in consenting to them one is deemed to consent morally to the effect. That is to say, if that thing be a cause merely remote and accidentally concurrent with pollution, such as fasting, or drinking hot beverages, equitation, idle conversation, drunkenness, even mortal drunkenness (provided you do not intend pollution, and there be no danger of consent to venereal sin), the consequent pollution is not mortal: because in consenting to such a thing, it is not thereby thought that one intends the effect. Fillius tractatus tertius octavus quaestio sexta numerus quadringentus et quinquaginta duos.

Holy. Liber caput sectionis decima quarta capitulum tertium de quarto quadratum quadragintaquattor. See trans. 43, rubric 4. Some doctors add this rule: pollution in a voluntarily chosen cause to be a sin, so far as it is itself; thus, if the cause be a mortal sin, then also the pollution itself will be mortal: if venial, venial: but if there be no cause at all, neither will there be any pollution (always excepting the risk of consent); hence, for instance, a venial sin may be that which results from curious reading or an aspect per se not mortal.

See Diana p. 4, t. 2, misc. r. 56. This is the reward of this work to clarify and distinguish all these matters more clearly and distinctly: If the cause of pollution lies in itself gravely, and man does not abstain from the cause or action to be put aside, it is evident that negligence is imputed to peccatum, even if it was not intended, provided at least it had been foreseen in the lapse. Such causes undoubtedly are all those which in themselves constitute a grave fault in the genus of luxury, namely, the touch or sight of shameful parts of either another's or one's own body with deliberate and base delight; the sight of human copulation and morose thoughts about venereal matters. Therefore all pollutions, proceeding from these causes, are certainly mortal sins, as stated by S. Th. 2. q. 454. a. 5. and others commonly hold.

And then that turpid act, which is the cause of pollution, has a special malice against nature, as Sameh says in the Matr., lib. 9, dist. 45, n. 21; and it is certain among all. Idem recte dicit Sporer de matr. n. 617., de pollutione orta er actionibus, quae licet sint veniales per se et ex objecto, evadunt tamen mortales ratione periculi proximi consentendi in ejus tumen delectationem. Hence it must be said that he is not excommunicated on account of the malice of pollution who is defiled by prolonged conversation with a girl whom he loves inordinately at least for fear of consent, as Petroc. says in the sixth precept, chapter 4, and in the seventh precept, point 2, note 34, with S. c. de Fluscuitbid., where it is expressly taught:488. — However, if the aforementioned actions are placed for a necessary cause, or useful, or conducive to the soul or body,

then the pollutions arising from them beforehand are not sins, provided that consent does not occur, nor its danger. Thus commonly Sylva. 2. 2. q. 454. a. 41. ad 2.

Forum. loco citato, articulus 6., sectio 4., conclusio 2., cum Henricus a sancto Ignatio et communis, punctum 2., § 2., n. 45. et 46. I consider L. 3, p. 4, n. 925. praeceps c. 7, q. 9, and others similarly. The reason is that then man suffers rather than acts, because the corruption does not proceed from his own malice, but from the infirmity of nature, as D. Gregory says in the context. Will, distinct. 6. Et juxta D. Thomam: Quando unius causae est duplex effectus quae immediatus, unus bonus, tertianus, et bonus equivalente malo, nihil prohibet bonum intendi et mulum permitti. Hence also, on account of a foreseen involuntary pollution, it is permissible for 1. parochs and other confessors to hear confessions from women, and to read treatises concerning turpulent matters; for surgeons to view and touch the parts of a woman in labor, and to study medical affairs: it is also permissible to speak with others, kiss, or embrace women according to the custom of one's homeland, to serve in baths, and similar things.

Thus S. q. 60. a. 7. 45. ex n. 4. usque ad 8. Bon. de matr. q. 4. p. 40. n. 6. Sporer loc. cit. n. 650. Anacl. de VI. praeceps n. 58.

R. . 61. n. 696. in fin. item Petrocor. tom. 2. de cum tit. 6. c. 4. in fine, ubi sic ait: 'Sell ubi politio sit omnino involuntaria, contra intentionem, non est peccatum, sicut quando quis audit turpia in confessione aut loquens cum mulieribus pro causa honesta et aliis agentur polluitio.' It teaches here n. 7. II. It is permitted to someone who suffers great itching in urination to wipe it away with touch, even though pollution may follow.

Thus at the end. Bon. l. c. n. 8. . 3. sect. 4. n. 43. Saint. Filius. tract. 30. num. 450.

Sporer, n. 650. Cross n. 926. with March. n. 49. with.; likewise Cajet. Navarr. Zanard. You might say that it can happen that the itch arises from the very heat of lust itself; hence, the extinction of the itch, which is brought about by friction, should rather be considered genuine delight.

But it should be replied that such itching, when it is extremely troublesome, arises from the bitterness of the blood, which results from the heat of lasciviousness. Sallem, in dubio, possidet libertas se liberandi ab hujusmodi molestia per tactum de se ticitum, dum licite quisquis potest tactu pruritum corporis abigere; etsi accidit pollutio, absque periculo consensus, per accidens et involuntarie, ac proinde inculpabiliter accidit:

ut autem iste ab eo tactu abstinere temeretur, probandum pro certo esset, pruritum illum a libidine procedere. Caterum sapienter monet Croix loo. cit. eos qui puritatem amant ut abstineant (intellige quantum moraliter est possibile) ab hujusmodi tactibus. That is absolutely prohibited; yet it permits to suffer some disturbance in that case where someone does not possess the virtue of bearing such a thing (4). III.

Thus also it is permissible to ride equitatively with a pollution even previsaged, for the cause of utility. Tr. 26, c. 7, punct. 3, § 2, n. 53, cum n. 650. Likewise with Hanno and Pichler, and commonly as he asserts. IV. It is permitted to recline in some place for more comfortable repose. Sanchez, . V.

To take warm foods or moderate drinks, and to lead decent dances. Sporer n. 650. Anton. . with Pichler etc. commonly. What if, when treating women, a surgeon has frequently consented miserably to pollution; is there fear that he will be thought to have abandoned his office?

It is probable that he does not fear to do so, provided he arm himself with due means, as Navarrus says at the end in n. 47. cum etc.; see what has been said in i. 2, n. 63. v. Queritur. The same is said of the parish priest who has repeatedly fallen into the same misfortune in hearing confessions; but this does not apply to a simple confessor, who can discontinue exercising his office without grave detriment to his reputation or means, for hearing confessions. Treatise 4.

Of the sixth and ninth precepts of the Decalogue: confessions, as with Palao and others cited. What then, if such persons have always, or very nearly always, fallen, and no reasonable hope shines forth for correction? Then we say that they are held to have deserted any office with any kind of defection, according to what is said in this book 4, no. 438, and more fully in book 6, nos. 457, 484. — The great question here is whether there is a previous pollution of mortal sin, which follows involuntarily from causes that only lightly influence it? There are many diverse opinions.

I. The opinion asserts that all previous pollutions are mortal and unimpeded, even if other causes are licit. Thus L. 9. D. 45. N. 40. II.

The opinion which Armilla holds in the same place, namely, that any cause, even one that is venially illicit, produces mortal pollution. III. The sentence which Soto follows, n. 42, holds that every cause which in itself is a mortal sin constitutes even a mortal pollution which follows from it. And according to this opinion it seems that St. Thomas holds in III. part.,

question 80, article 7, where he says: "Sometimes (pollution at night) is due to sin, perhaps, when it arises from excess of food, or from drink."

And this too can be a venial sin, or even a mortal one. IV. The common and more probable opinion teaches that pollution is not mortal unless it proceeds from a cause per se mortal, in general luxury. Thus. IV. chapter 3. doubt number 44. note 402.

Sylvius 2. 2. question 454. article 44. ad 2. Sporer on Marriage c. 3. n. 647. Cross chapter 3, part 4, note 922. chapter 9, question 45, number 46, with Sylvius, Turretin, question 9, response 2, precedent note 257. Anacl. eod. tit. n. 54. p. 40. n. 5. . 26. c. 7. punct. 3. §. 2. n. 52. et 54. cum S. Anton.

The reason why there should additionally be a mortal sin in that same genus of luxury is because, since the cause lightly contributes to pollution, there is not a serious obligation to avoid that cause on account of pollution which happens beyond intention. Hence it is inferred that there should be no pollution except venial pollution, which arises from a brief conversation with a girl, or from a light look, or from a curious and venially turpid reading; because, as stated, since these causes have but slight influence, the subsequent pollution rather proceeds from a natural cause than from those. Thus 45. n. 48. . n. 50. with others as above. The same is held by P. Cuniliati, tract. 2, c. 2, n. 45, who says: Committing a mortal sin by placing actions that are turpulent and closely exciting him to pollution or commotions.

Thus, if the cause be remote, as in equitare, cubare, comedere cibos calidos, loqui cum mulieribus, even though it may be placed without end in virtue, he will sin only venially. They speak about pollution arising involuntarily from the reading of a dishonorable act done out of curiosity, without a wicked mind or danger of delighting in the obscene things themselves. 3. c. 3. n. 102. with Sa, p. 40. n. 9. with Vasq. n. 8. Sporer n. 648. with Sanchez. But in practice I would never concede this, and even less so if frequent pollution has often occurred due to lewd reading for mere curiosity, as rightly Roncaglia, Question 7, n. 41, agrees and consents, not to excuse a mortal sin committed by one who has frequently experienced such pollution from certain causes within the same genre of lasciviousness which more powerfully lead to pollution, and places them voluntarily and without necessity, although they themselves do not per se pertain to mortals, such as lewd reading, a turpitudinous aspect of an obscene painting, or caresses of animals, contact with one's own forbidden things, or another out of levity, and similar acts: the reason being that in regard to this person, by virtue of their depraved disposition, such a cause

does not lightly influence.

They argue otherwise, if pollution arises from such causes rarely, and similarly, if the causes are entirely light, as regards the view of parts of a woman's modesty, a slightly turpitudinous reading, a brief colloquium with a woman, or something barely obscene: reason being that it is almost morally impossible for men to commonly avoid all these causes. Ita. 48. et. num. 50. It is asserted that a non-mortal pollution occurs, which, besides intention, happens through illicit causes, still mortally in another genus than that of luxury, for example, from intoxication, or from excessive and immoderate consumption of flesh, or on a forbidden day. Thus when speaking to Busenbacher n. 8, part tom. 3, Question 80, art. 7, num. 6, 4 c. 3 n. 99, he said that pollution arising from the superfluity of food or drink only entails some guilt: But when (in the words of the Pontiff) appetite is excessively drawn in taking foods beyond measure,... there results thereby some guilt for the soul.

That word explaining which the Glossa says, namely a venial sin. The more it will not be a mortal pollution which arises from venial causes in another genus, such as from equity, eating hot foods, situation, and other similar actions. But this is disputed: whether it is at least a venial sin to place such slightly illicit causes in another matter without a reasonable reason, when from them one expects oneself to be polluted? They deny number 690.

Croix lib. 2. part. 4. num. 924. with Arriaga, and num. 24. n. 99. 270 Lv. 4. Treatise 4. Of the second and ninth commandment. Scourge him according to number 649, number 6, 26, chapter 7, point 3, section 2, number 52, with Saint Gregory.

St. Augustine. L. 3. sect. 4. n. 12. teach commonly the Doctors cited n. 483. And this, even if that cause were venially illicit in the same matter of luxury, as commonly they say . n. 51 and §. 3 n. 63 r. 3, as has been said above (4). 465. — 7. Politia in somno facta est mortalis, 1. If before direction either directly or formally it has been procured, and the cause has not been withdrawn. 2.

When after sleep it pleased and was approved on account of venereal delight; otherwise not. n. 148. But see regarding this 1. 2. n. 20. Whether many political arrangements, made between men or women, are merely indulgence, or sodomy? Response. If it is made from a single affection towards venery without concupiscence, "is it merely mollification? But if it is made from an affection towards that person in an indecent manner

(especially if there be some connection and mixture of bodies), it is with regard to malice sodomy. o. 8. See above book 2, chapter 1, decree 2, article 2, on sin in general and the authors cited concerning this entire matter.

Here it is to be seen above, under the preceding number 667. Finally, this must be carefully noted, says Saint Alphonsus at the end of book 4, part 24: that in this matter concerning the sixth precept, as much severity as possible should be applied; no vice in such a fragile matter should ever be considered trivial, and many opinions which are probable when spoken about should in practice turn out to be improbable. Hence, the confessor, when he perceives the danger penetrated, although he cannot with certainty condemn that certain mortal sin which the penitent may perhaps commit, nevertheless in no way permits it. This medium is removed so that, especially with regard to those who have had a vicious habit in the past; for these it will be necessary not only to avoid by immediate consent what is proximate, but also to be removed from it; others, because of their weakness, must always be held fast to the same thing, since men are naturally inclined to this matter and easily slide from lesser evils into the misdeeds of another. Confirmation 1. 1. n. 84. and 1. 8. n. 808.

This medium is removed so that, especially with regard to those who had a base habit in the past; for these it will not suffice merely to avoid the proximate consent, but also to be removed from it; others, because of their weakness, must always be held fast to the same, since men are naturally inclined to this matter and easily pass from lesser evils to the vices of another. TREATISE V. ON THE SEVENTH COMMANDMENT: THOU SHALT NOT STEAL. a. The care of soliciting alms is prohibited by all signs to those who have to keep watch over such goods; namely, through fortune and supplication, through omission and repurification of damage incurred, through iniquity of contracts; from these three, so that the poor may be.

TREATISE PREFACE. ON JUSTICE AND LAW. "is. What is the essence of justice and how was it divided? And what was its nature originally?

What is dominion, and what was imperium? To them. What is simpler than liberty, familiarity? 488. What are good gifts? 490. What are good clerics?

And especially 1. What are they [the goods] patrimonial? II. What is Juda-crafted?

III. What are paternal goods? IV. What is the Church? - who.

And why for what reason? I. Does one owe the same right to another and to the poor just men? Qu.

II. Who come in the name of the poor? What. III.

Is there a preference for poor gods? What. IV. Can superfluous errors be eradicated?

What. V. A cleric, having his own, can live from the goods of a benefice? What.

VI. And also the pensionaries were bound to navigate on the waters for the wife through what? What. VII.

An impiety and no extraordinary return, there is also sometimes a correction? Qu. VIII. In more serious sinning, who receive superfluities unwillingly and out of beneficence? 495.

How has the mastery been acquired by means? In gravioribus peccantibus, qui malo accipiunt superflua et beneficia? By occupation. 495. II.

Nativity. 495. III. Aluvione. 496. IV.

Specifications. 497. V. Accessione. 498. VI.

Confusione, vel contaminatione. The same thing that runs towards justice rather than, is it to be endured in any rare justice? VII. Difficultatione.

VIII. Plantatione. on IX. By perception treatise. 508.

Tenth. Transmissione. 504. On prescription, and the conditions required for prescribing; and I. On good faith. 505 II.

Regarding a just title; and whether a colored title is deemed sufficient, or is it considered as existing? 506 III. Regarding continuous possession, and concerning the time required for prescription, see numbers 510 and 511. When is prescription interrupted? Can the possession of an heir be one of bad faith? Can freedom to walk through another's land or much more be prescribed? To what extent will full restoration be given regarding goods that are prescribed? IV. The condition for prescription is that the thing be suitable for prescription. 516 The decision of the four courts in Naples

concerning prescriptions was made. 517 Can a thing prescribed be retained in conscience even where the law of prescription does not prevail? 486. — BEFORE we proceed to the three following difficult treatises on theft, restitution, and contracts, it is expedient to note certain general matters regarding justice and law. Justice is commonly divided into legal, distributive, and commutative.

Legalis respicit jura legum, et penas. Distributive regards the merits of persons as regards rewards and honors. The commutativa however regards the equality of the value of things according to human estimation, so that to the master may be given back only what has been taken from him, or what damage has been inflicted upon him. The law is divided into jus in re and jus ad rem.

Jus in re est, quando res ipsa habetur obligata, et ideò tribuit rei vindicationem, seu actionem in rem ipsam, v. gr. The seller, who has delivered the thing, has an action in the very thing itself for its price: the beneficiary has a right by collation to the benefit, and similar cases. Jus autem ad rem est, quando res nondum est obligata, sed tantùm jus habetur ad eam acquirendam. Therefore, the right to a thing is merely an action against the impediment to acquiring it. 487. — Next, the right in a thing is divided into dominium and usus fructum.

Dominium est aliquid juris in relatione ad subjectos, ut habet pater in relatione ad filios, episcopus in relatione ad diocesanos; aliud est proprietatis in relatione ad res vel servitutem. The same dominium is direct in one respect, as a prince has over fiefs and a master over property given on emphyteusis; it is useful in another respect, which belongs to the feudatory and the emphyteutic tenant. The usufruct, however, is the right of using and enjoying something, and deriving fruit from it. It must be noted that the usurer differs from the usufructuary, who has the use of some thing, for example a garden, from which he can gather fruits for his own family and guests; but he is not able to alienate those things, l. Plenum. ff. de usu etc. Ita pariter habens domum usum, potest eam habitare, sed non locare, nec alii concedere usum, si ipse eam non habitaverit.

Moreover, it is to be noted that the usufructuary is incumbent upon solving expenses for the perception of fruits and tributes or collections imposed upon the thing itself. Up to this point, concerning the use and usufruct. Then is it held that the estate should be well cultivated, and new trees substituted for old ones. As for great expenses, one is not bound to them personally, but rather the proprietor. (4) (1) Which is codified in the Civil Code concerning use and usufruct, these primarily, which are

necessary due to their frequent use in discussions on law and justice as well as contracts, are contained in the articles: Art. 578.

Ususfructus est jus rebus alienis utendi et fruendi sicut ipse proprietarius, salva earum substantiâ. Article 579. Ususfructus either by law or by one's own will, Art. 580. Either simply or for a definite time, or with some condition, Art. 581.

Upon any thing whatsoever, whether movable or immovable, a usufruct may be constituted. Article 582. The usufructuary has the right to appropriate all kinds of fruits of the thing, whether natural, industrial, or civil. Art. 583.

Natural fruits are called those which the earth produces of itself; and those which arise or increase from animals are likewise called natural fruits. Those which are obtained through the cultivation of the land are industrial fruits. Article 584. Gains from the letting of houses and from borrowed money, as well as the arrears of pensions (gall. arrérages des rentes) and gains from the letting of lands (gall. baux d ferme) are referred to among civil fruits.

Art. 585. Natural and industrial fruits from branches or roots themselves are to be enjoyed as an usufruct at the very time when the use-fruition is commenced. Qui vero in eodem statu versantur, ipso tempore momento quo ususfructus finitur, proprietarii sunt ex nullo tamen parte compensatione cultionis aut seminum factâ sine damno et coloni partili, si quis erat tempore cœpti aut finiti ususfructus qui jam partem fructuum acquisiverit. Art. 586.

Civils are considered to acquire daily usufructuary use for the rate of duration of the use-fructus. Art. 587. If the usufruct includes consumable things, such as money, grain, liquid goods, the usufructuary may use them, but it must be restored to an equivalent in quantity, quality, value or estimation. Art. 589.

If the usufruct includes things which are not consumed but gradually deteriorate, such as linen and furniture, the usufruitor will have use of them while they remain fit for purpose, being obliged to return them in the state in which they were found, even if they are deteriorated, provided that this is without deceit or his own fault. Art. 594. Trees bearing fruit that have died and even those, having been cast down by chance, yield to the usufructuary under the burden of planting new ones in their place. Art. 595.

The usufructuary by law can himself make use of it, or let, sell, or give it to another. In the matter of the location, both as regards the duration thereof and as regards the time when it is to be renewed, he will observe the defined rules for the location of the husband's goods, according to the title of the matrimonial contract and the rights of the spouses. Article 597. Rejoices in the rights of servitude, ways, and generally in all those rights by which and in whatever manner the proprietor himself enjoys them.

Art. 599. Likewise, upon the cessation of the usufruct, he who is the usufructuary will not be able to demand any compensation for expenses incurred with a view to rendering the thing better, even if there has been an increase in the value of the said thing. Nevertheless, it will be permissible to take away the specula, images, and other ornaments, provided that everything is restored to its former state. Article 600.

He who finds what usufruct he has, will enjoy that fruit; yet he will not be able to use it, unless the owner is present, or at least legally called in his stead, and an inventory of movable and immovable goods prepared for the usufructuaries who are about to take over. Art. 601. It is incumbent to provide caution, so that one may enjoy the goods of the lord in the manner of a good father of a family, unless otherwise agreed upon in the constitution of the usufruct. The father and mother are received for the use and enjoyment of the sacred legacy of footpads; likewise reserving and excepting the right to sell or alienate the fructus.

Article 685. He who is in usufruct is bound to make such partitions only as are necessary for the preservation of the integrity of the thing; nothing more. The proprietor is obligated to make greater reparations; unless such necessity arises from the negligence of the usufructuary. Article 606.

Greater are the reparations for breaches of walls, partitions, beams, and roofs of the entire structure; likewise for integral mounds and walls that bear or lean upon them. The remainder of all repairs are considered to be for the preservation of the thing [Art. 607]. Neither the proprietor nor the usufructuary is bound to remain in residence, which is due either to a veto or to an act of fortune causing a collapse. Article 608.

The usufructuary is bound to bear all annual burdens, such as taxes and imposts which are deemed due for the productive thing. Article. 608. As regards taxes, imposed on the property during the term of usufruct, the proprietor is bound to pay them; their usurious interest (galf. intertris) is to be paid by the usufructuary. If the true usufructuary himself has

satisfied these tributes during the term of usufruct, he may at the end of the usufruct recover the sum of money expended.

Article 614. If anyone unjustly irritates the dominion in any manner during the time of usufruct, the usufructuary is bound to restore it; and if the proprietor has not done so for every damage, he will indemnify for all harm, and himself would have made the thing worse. Art. 615. If an animal given in usufruct shall perish without fault of the usufructuary, he is neither bound to substitute another, nor to pay its value.

Art. 616. If the entire flock of sheep perished by a fortuitous accident or disease without culpability in the usufruct, he shall only provide hides or their value; but if the flock as a whole did not perish, for the dead ones let other heads be abated from the number of heads that arise from the facts. Art. 617. Usufruct is lost through natural or civil death; upon the expiration of the time for which it was constituted; by non-use for thirty years; if the usufructuary evades the proprietor; and if all the property together with the usufruct perishes.

Art. 618. It is also lost through abuse, by deteriorating the thing, or by neglecting repairs. Art. 619. The usufruct, which has been granted to non-significant persons, is valid for a period of thirty years only.

Art. 620. Usufruct granted to a third party until a certain state is reached holds valid until that definite time, although that party may have already passed away. Art. 621. By the sale of a thing, the rights to usufruct are minimally altered, unless oneself has expressly renounced the usufruct.

Art. 622. Which requirement the creditor has to give no value at all, must have been made for their own detriment. Art. 623. If solely the usufructuary perishes, the usufruct remains in the survivor.

Art. 624. Si constitutus sit super additionem hocque incendio sua aut vetustate pereat non continuatur iu fundo vel materia. Thus if constituted over a foundation whose addition was ready, let it be consumed either by its own constitution or by age, nor continued in the fund or material. Article 625.

The right of one who possesses by reason of which an usufruct is constituted and lost in a manner. Art. 627. User and inhabitant may use the thing in a manner becoming a good head of the household. Art. 628.

The rights of use or habitation are determined or extended by those things

which constitute titles. Art. 629. If from the title itself it is not apparent that these rights are widely patentable, the following are established: Art. 630. The user can only demand from the fruits of the land what is necessary for himself and his own family as well as for the offspring, which he has enjoyed since the time of use.

Article 631. He cannot transfer or lease the right to use. Art. 632. He may dwell in the house with his entire family, although he has not been joined by marriage, if he acquired the right to habitation; military. (1) Note that the peculium of a military child's family is quadruple: military, quasi-military, profectitious, and adventitious.

And I. Castrense. They are called goods which a son acquires in camps and in military service, whether these be due, such as wages, or acquired by donation from the commanders of the militia, or from parents, or from others through some occasion of the military. 2. a. 4. n. 7. Lugo d. 4. n. 15. II.

As quasi military goods, they are said to be goods which a son acquires in public offices, such as those of judge, advocate, reader, physician, etc. Of these two kinds of property, with regard to ownership and usufruct, the full rights pertain to the son. And this, even if a reward is demanded from private individuals. Lugo, no. 46, with Sylvester, concerning notaries, or causes of public matters, or private contracts. For other artisans, although they may serve publicly, their wages nevertheless are not determined by Article 633.

The definition of a dwelling is determined by the fact that it is necessary for the household as a whole. Article 634. The necessity of a dwelling can be made in this way. Art. 635.

If the user consumed all the fruits, or occupied the entire house, he would be held responsible for expenses of cultivation and repairs, as well as for tributes, just like an usufructuary; if he used only a part of the land, he would be held liable in proportion. (1) Who from the cooked food or filial affection is not greater than the major. Each and every law its own justice be defined here in these articles: Art. 32. Froli in matrimonio censepte paten est ipse maritus.

Translation: The consent to marriage is considered given by the very fact of the husband. Art. 331. A child born out of wedlock may, if it is received as incestuous or adulterous, be made legitimate by a subsequent marriage of its parents. Art. 332.

The offspring made legitimate by a subsequent marriage would have been the same prepubescent, commanded and born from that very marriage itself. Art. 438. The majority is at 21 complete years. Article 338.

He is a minor who has not completed 21 years. Article 478. A minor is disinherited by law through marriage. Art. 479.

He will also be emancipated by the will of the father or mother, if to him paternity fails, being born fifteen years old. Art. 334. While the marriage lasts, the father has guardianship; but after its dissolution, either the father or the mother shall have the usufruct of the goods of the children until they complete eighteen years of age or are emancipated earlier. Art. 335.

The usufruct of the goods of the children is to be held: 10 for those things for which they are bound to have an usufruct; 12 for nourishment, maintenance, and education of the children according to their means; 32 for ammas: expenses incurred in saving life or health; 40 for expenses of funerals and making necessary medicines. Art. 336. He who does not enjoy that usufruct, against whom the broad sentence of divorce is directed, and whose mother is also delayed in enjoying on account of secondary marriages. Art. 337.

The right to usufruct, which is given either to the father or the mother, does not extend to goods that are either their own; or those for which they themselves have provided beforehand, so that they might not be subjected to such a hindrance; nor to goods which have been directly donated or bequeathed to the children, depriving both the father and the mother of the right of usufruct. Art. 730. Parents (who are legally unworthy) deprive the children of goods coming to them by inheritance of the use-fruition. Art. 339.

While the marriage stands, the father is in charge of administering the personal goods of minors, being subject to rendering an account only with regard to the property itself of those goods in respect to which he enjoys the right to use them. Edited holds for the peculium quasi castrense; yet it receives exception n. 48 regarding the architects of the prince or community. All goods, however, donated with a view to the exercise of the aforementioned offices, are quasi castrensia. Lugo n. 49.

Such are all things which are acquired by a daughter from her father through the clerical office, according to L. Presbyters, 6th chapter on the Bishop and the Clergy. But the same is said of all things that come to the

cleric from any whatever title. Lugo n. 21. cum Mol. Hocque rectè dicit Lugo n. 22. contra aliquos de clericis etiam tonsuratis, cùm textus cit. exprimat etiam cantores.

III. Peculium autem profectitium sunt bona, quae proficiscuntur de rebus paternis, et filius lucratur in ipsis negotiando; peculium hoc totum pertinet ad patrem quoad fructum, et proprietatem. And likewise are called those goods profectitious which are given to the son with intent from the father; but according to another manner, if they are given to the son with his own intent, although through the occasion of the father the son is known by the giver. Note n. 37.

In dubio autem, an aliquid sit donatum intuitu patris vel filii, erit totum filii, si ipse bona fide inceperit possidere; alias dividendum pro rata dubii. But goods truly given by the father to the son for a patrimony to receive sacred orders are not to be reckoned among benefactions, but rather are to be conferred with other brothers when he demands his portion of the inheritance; as Lugo, loc. cit., in dubium 4. an says: whether the son derives the whole and always as profit from the father's goods? They affirm and say that it is partly profectitium, partly adventitium. Lugo autem cum Molina tenet: esse profectitium, si filius negotietur nomine patris; adventitium vero, si negotietur nomine suo; putandumque, si ipse furaverit pecuniam a patre, vel si pecunia otiosa erat apud patrem.

It is certain, as Lugo teaches in his dicta n. 40, that if the son engages in business transactions outside the father's house with goods other than paternal ones, profit will not be future profectitium. In dubio tamen, an lucrum provenerit ex bonis patris vel alterius, tum tantum profectitium præsumitur, cum filius administrabat bona paterna. Lugo n. 41. whether a son may demand remuneration as a stipend for labor rendered in the benefit of the father? They affirm. L. 4, c. 2, d. 8, n. 4, and they consider it probable. 3 Tr. 4, c. 8, n. 6, and Bus. infra, n. 544.

They deny, however, Molina and others in III P. 4, n. 4054. However rightly he distinguishes Lugo d. 5. n. 42., and says that if the son lives outside the father's house and is not nourished by the father, what he earns is extraneous; but profit, if he resides in the paternal house and is nourished by the father, as well as those services are due to the father: yet if they exceed, the son can properly ask for a salary. But this doubt arises: whether it is to be presumed that those aforementioned obsequies were excessive, and the son did not seek a stipend, that they have been remitted? Mol. d. 234. n. 4. absolutely affirm that this contributes to the common good, so that we may avoid frequenting estrangement among parents and children.

But it is more probable that Lugo says in dict. n. 42. cum. Otherwise, if he hesitates to ask out of pious reverence for his father; nevertheless, in that case, he should deduct from the food received from the father what is necessary as sustenance. See also what is to be said. IV.

Finally, extraneous property are goods which come to sons from some other source than from paternal goods or by reason of the father's intention. The son has ownership of these goods, while the father acquires use and profit from them, even though they belong to the majority. Lugo d. 5. n. 30. Sometimes nevertheless the son acquires even such a use and fruit, namely I.

When the precise use of the fruit is given to the son, or something is given to the son, contrary to the father's will. II. If the son succeeds together with the father in the inheritance by deeds, or by reason of seniority. Thus 2. c. 3. num. 9. 10 eb 44. and Lugo d. 5. n. 30. with others.

III. Lugo adds ibidem, si filius accipit dotem, patre se non obhignat: vide alia apud Lugo. He excepted these cases: a son cannot dispose of adventitious goods without the father's consent, nor can he make a will, even with his consent, unless for pious causes, according to c. Eicet 4. de sepolt. in 6. He nevertheless can testify universally concerning the camp property, as stated above.

The use and fruit of the adventitious peculium shall belong to the father so long as he lives, even if the son is released from paternal authority; except when the son is elected thus to the Episcopate, or to a great dignity, namely, if he becomes a Cardinal, prefect of the greater city, royal counselor, master of the soldiers; then indeed the entire use and fruit shall belong to the son, according to Lugo n. 24. 42. c. 3. p. 2. 4. 4. 4. 4. 4. 4. 4. 4. 4. 4. n. 274. Si vero pater emancipet filium, dimidia pars usus fructus erit patris, et dimidia filii. Lugo, and Holzrn. 10. This understanding, however, holds true only if the emancipation was voluntary on the part of the father; for if the son is emancipated by reason of marriage, according to Spanish law, then the use and fruit will belong entirely to the son: but if it be by reason of a religious status assumed by the son, then the use and fruit will belong entirely to the father.

Lugo in the same place. Here is to be noted I: that if the father permits the son to depart from his house, it does not follow that he can remit the use and fruit thereof, unless the son is dismissed to seek sustenance for himself; or unless, with the father's knowledge and consent, the son

expends the fruits, according to Lugo n. 27. ex I. When it is necessary. e. concerning goods which are free. II. Notandum quod si bona sint usu consumptibilia, tunc pater possit de illis disponere cum obligatione reddendi filio tantundem.

Lugo n. 35. and Mot. 489. — Non auxeris alia sunt, datalis, alia parapharmalia, (1) quae (1) Ex cod. civ. Married persons can be constituted under a triple regime of goods: 10 Under the regime including community of goods; 20 Under the regime excluding community of goods; 30 Under the dotal regime. Various are the laws for this diversity of regime, and various are the obligations of spouses. Furthermore, there is a legal community and a customary community in which common goods and those that are proper to the spouses are distinguished.

I. Article 1400. The community of goods has a place when the spouses enter marriage without property that the wife brought with her or reserved for herself beyond the dower. The wife has full dominion and use over the paraphernal property.

By this law, they declare neither by any convention nor simply, that they will be subject to the regimen of community of goods. Article 1387. Wives are considered to always dispose of their goods according to the norm of civil law, unless they have made special agreements concerning them, provided that such agreements be at least not contrary to good morals. Art. 1528.

The conventional community follows in all things the laws of the legal community, unless it has been implicitly or explicitly derogated from by this. Art. 1401. Among common goods are referred: 10 All movable things which spouses acquired on the first day of marriage or subsequently received by inheritance or donation from a donor not contrary thereto. 20 All kinds of fruits, revenues, rents, pensions and annuities which come to spouses during the time of matrimony either from their own properties already possessed as of the first day of marriage or afterwards received under any other title. 30 All immovable things acquired in marriage. Art. 1404.

Immobilia vero, quae conjuges jam ante matrimonium posiderunt aut in matrimonio haereditate acquisiverunt, neutiquam inter communia referuntur. Art. 1405. Similarly, immovables given by one spouse to the other during the time of marriage are considered minimally incorporated into the community, but rather pertain to the donated goods, unless the donor declares otherwise, so that they may be regarded as a number

among the goods of the community. Art. 1406.

Immobilia à patre vel matre aut alio ascendente alterutri conjugum, ut ipsi aut donatoris creditoribus satisfiat relictas, non sunt communia, salva compensatione aut indemnitate. Art. 1409. Communal debts refer to: 1o Debts, by which movable goods of the spouses were already burdened as of the first day of marriage, or those which are burdened by inheritance obtained in marriage. 20 Debts, which arise either from lots, or from annual pensions and usuries during the time of community, by the husband, or with his consent contracted by the wife. 30 Debts, which are solely due to pensions and usuries alienated for themselves, or primarily for the spouses. 40 Debts for reparations of immovable usufructs not communal. 50 Debts for alimony of the spouses, education and upbringing of children, and for any other burdens of marriage. Art. 1421.

The husband administers goods brought to community, which he can sell, alienate, and mortgage without the consent of the wife. Art. 1428. To the husband is granted the right to administer his wife's goods by himself, as well as to institute actions for obtaining movable and contentious goods belonging to his wife. However, the husband cannot alienate the immovable goods of a non-consenting wife; and if through her own culpable status such goods have been deteriorated, she is bound to restore them.

Article 1428. Civil actions which a wife exercises without the consent of her husband, even though performed with the authority of the judge, cannot affect common goods, unless it be in respect to commerce, which she carries out publicly and separately. Art. 1457. If however a sum of money was expended from common goods for settling the debts of either spouse, as full price or partial value of an immovable property owned individually or for redeeming servitude, or for recovering, preserving, repairing one's own goods generally and whenever any profit of one spouse derived from the common thing has been made use of, then compensation is due from that person.

When spouses, intending to enter into marriage under the regime of dotal management and excluding community of goods, or including a separation of goods, subject themselves to these laws: Art. 1550. In marriage initiated with a clause excluding the community of goods, the wife neither can administer her own goods, nor receive the fruits thereof; this right belongs to the husband for sustaining the burdens of the marriage; c. de pactis. The property of dotal goods regards the wife, but the use-fructus and full administration thereof regard the husband, according to the law 2. ff. de jure dotium. Hence, after the death of the husband, the wife is preferred

before all personal creditors.

And while the husband is still alive, if he himself falls into want, the wife may reclaim the dowry from the same source. Then it must be noted that if the dowry consists in money or things usufructually consumable, then the dominion over the dowry fully passes to the husband, together with the obligation of repaying the same amount upon dissolution of the marriage, l. Thing in dowry, ff. according to the law of dowry. Hereafter to be noted, namely Article 1531.

But upon dissolution of the marriage or separation of goods as decreed by the judgment of the court, she is to be restored in full to her rightful share. Article 1532. Si ex mobilibus ab uxore in dote aliis aut ipse in matrimonio obvenerint usu consumptibilia inveniuntur, fiat estimatio ipsorum in contractu matrimoniali, aut inventarium tempore quo obvenerunt, juxta quod a marito pretium restituendum. Art. 1533.

Marius tenetur ad omnia onera ususfructus. Art. 1534. Nothing, however, prevents the establishment of what the wife may receive from her own portion of revenues for her own use. Art. 1535.

Immobilia allata in dotem, de quibus praesens est paragraius, alienari possunt non tamen sine consensu viri aut si hic nolit sine auctoritate judicis. Art. 1536. In matrimonio autem inito cum clausula separationis bonorum includente, uxoretur administratio mobilium et immobilium, nec non ususfructum habet. Art. 1537.

Each spouse contributes to bearing the burdens of the marriage according to agreement; but lacking such an agreement, the wife contributes as a third party with regard to her own revenues. Art. 1538. In no case and for no reason can the wife alienate immobile goods without the consent of the husband, this being done contrary to his will without the authority of a judge. III.

Article 1532. The dotal regime is instituted through an express declaration by the spouses that they wish to contract under this regime; nor is it sufficient for this purpose the establishment of a dowry, or the exclusion of community property, or even the separation of goods. Art. 1541. Quocunque uxor in dotem constituit, aut in matrimoniali contractu accipit, bona dotalia sunt, nisi extet conventio contraria.

Art. 1549. Marius himself administers the dotal goods, and has the right to pursue debtors and possessors thereof in judicial proceedings, to collect

fruits and usuries and representations of inheritances. However, in the contract of matrimony, a condition can be imposed whereby the wife may annually receive a portion of her husband's revenues for her own use. Article 1551.

The husband is the possessor of the entirety of the dowry or part thereof consisting of movables, whose value is fixed in the contract; he is bound to render only the stipulated price, unless it be declared that the estimation has no reason for sale. Art. 1552. However, with respect to real estate included in the dowry, constituted by estimation, the husband acquires no dominion in any case, unless otherwise stated. Art. 1554.

Immovable goods constituted in dotal estimation cannot be alienated or burdened with a mortgage during marriage, neither by the wife nor by the husband, nor by both together simultaneously, except in cases defined by law. Art. 1562. Marius ratione bonorum dotalium iisdem, quibus tenetur obligationis usufructuarii; rationem reddet de prescriptionibus aut rei depravationibus, quibus causam negligenti avae dedit. Art. 1563.

If danger threatens, the wife may demand separation of goods in judgment. Art. 1574. Goods which have not been brought by the wife as dower are paraphernalia. Art. 1575.

If other goods of the wife were not paraphernalia, then those very goods would contribute to the burdens of the marriage for a third part of the revenues, unless some other agreement had been made. Art. 1576. The wife has the right to administration and usefruct of her paraphernalia; nevertheless, she cannot alienate or litigate concerning them without the husband's consent or against his will, by virtue of judicial authority. If dotal goods, even stable ones, are appraised with intent that such appraisal constitute a sale, then the husband acquires dominion over them, and upon dissolution of the marriage, they are not feared except to be returned for the price. As often as, if from the law defamed.

And in the aforesaid two cases, if those goods perish, they perish for the husband, I. Property in dower. 190. — The goods of clerics are distinguished quadruply, namely: I. In the patrimonial goods, which are called those that are present to meet any temporal need for secular reasons. II. In bona dotales, quae dicuntur ea, quae obvienti in ex qua- ennique causa sacrata.

In goods quasi patrimonialia seu industria- lia, et dicuntur ea, quae clerici acquirunt ex ecclesiasticis functionibus sine beneficio, ut ex concionibus,

missis, etc. III. In goods mercedarum, et sunt illa, quae sequuntur ex beneficis. IV. finally in bona patrimonialia, quae sunt illa quae clericus ex redditis ecclesiasticis subtraxit de sua sustentatione, vivendo parcius quam honeste vivere potuisset. 166. — 4. Regarding goods of a patrimonial nature, it is certain that clerics have dominion over their property, as is evident from c. Relatum 12. de testam.

II. The same holds for industrial goods, as commonly taught by the Doctors and the Saints. Cons. 1. 2. c. 3. dub. 35. et 45. 2. c. 4. stab. 6. Lugo concerning just. d. 4. sect. 3. n. 23.

Anacl. tr. 7. d. 4. q. 3. Life Opusc. de beneficiis g. 3. art. 4. n. 5. . 12. c. 2. punct. 41. 5. 4. n. 488. cum n. 27. cum ; quia, cum habeat jus vivendi ex beneficio (ut infra videbimus in quaestu. (V), is not bound to live from his own goods; hence, if he lives from them, he can make use of compensation. I do not think this to be admissible, if the cleric does not have superfluous goods from ecclesiastical property; and here and now he is bound to provide for the necessities of the poor with his own goods.

Otherwise, although he is not bound to make elections now, let him nevertheless have the intention of compensation. But nevertheless, canonicals are compelled to daily distributions among industrial goods; they deny [this] in question 4, number 74. Saint Thomas Aquinas, Fourth Book, Question 46, Doubt 4: As they say, true distributions are parts of the return of the benefit, and therefore they have the same nature and burden as the fruit of other benefits. But more probab ly affirm Lugo in n. 25 and n. 460 with Aster and Sylvest.

Rutio, quia praefatae distributiones, licet ex titulo beneficii proveniant, non tamen dantur immediate pro titulo, sed pro servitio personali, tamquam personae stipendium. III. The same shall be said concerning personal goods as concerning industrial and patrimonial goods, so that the cleric may dispose thereof at will, as the Mon. 30, n. 39 teaches. Cabbas.

Theological jurisprudence 1. 2. c. 16. n. 8. Mazz. tom. 2. p. 410. et n. 39. cum Sot. 4. de et alios paucos). Et idem expressè docet S. Th. 2. 2. qu. 185. art. 7. ubi ait: De his autem, quæ sunt specialiter suo usui (scilicet clerici) deputata, videtur esse eadem ratio, quæ est de propriis bonis. Reason, because the aforementioned goods are not given as a fruit of benefit, but as a reward for the labors of those who serve the Church. Nor does it hinder the text in the canon of Bishop, caus. 42, q. 4, which opposes Peter, where it is read: Whatever, however, of his provision for the Church has been, whether of lands or of fruits, we have deemed all to be reserved in

the right of the Church.

For it is answered from what has been said above, that partsimonial goods are not for the provision of the Church, but for the provision or stipend of the labors of the minister, as was holy in the council where it was said: All clerics who faithfully serve the Church receive their stipends, due to so much labor according to the intention of their service or canonical ordination, from the priests or bishops. IV. The greater difficulty lies in the goods of ecclesiastical merit, which surpass their own sustenance, whether clerics can unjustly dispose of them badly? It is certain that beneficiaries are bound to apply superfluous annual revenues above their own sustenance either to pious uses or to distribute among the poor.

Thus St. Thomas, 2nd part, question 185, article 7. Lugo d. 4. sect. 4. n. 9. l. 2. c. 2. dub. 38. 42. c. 2. punct. 44. §. 2. n. 144 et 144 cum et communi. But as regards this, they are bound by the virtue of justice or religion, as will be said below. This however must be diligently noted: that for this matter to be considered grave in nature, a much greater quantity is required than in theft, as Lugo says in n. 42 with Mol.

Henry and others from the chapter which requires much access to form a bad faith in the cleric. What, however, is this notable quantity? Coninchius, Palaus, et alii apud p. 419. requirunt quartam, vel quintam partem superfluorum. But truly, it suffices one-twentieth part for构成上述问题的答案部分后，<|im_start|><|im_start|>⚗□

Here incidentally it may be noted, Benedictus XIV. in his Bull No. 29. The Universal Church, edited on the 20th day. August 1744 it was declared that if the beneficiary sells the fruits of benefice throughout his entire life, whether by a single or multiple solutions, no contract is formed. But seek.

I. Sed Question NoneA cleric is bound to assist the needy with superfluous necessities? They deny, lib. 7, c. 44, q. 2, cum. q. 2, a. 4, n. 42, who say that according to Vasquez and the common opinion, a cleric can expend superfluous resources for his own whim, whether on paupers or other pious uses, because it suffices to apply something to God's honor without dissipating, as stated in cap. 4 de ref. But it seems altogether to be received according to Lugo, d. 4., n. 45. and 39. and num. 47., if there are poor persons in grave temporal or spiritual necessity; for then the cleric cannot expend his superfluous goods in other pious uses, because then there is a pressing precept of natural charity, from which it follows that, if he has good things of his own superfluous, he is already bound to give them under very serious obligations.

And he has observed that, according to Vasquez, pastors, such as bishops and parish priests, are additionally bound to inquire about these kinds of poor people, but not beneficiaries who are not pastors. Seek. II. Who come in the name of the poor?

They indeed come, some not openly begging, but also those who cannot otherwise maintain their status. They also come who are consanguineous, if they are truly poor, so that they cannot otherwise sustain their own status, as I. 2. cap. 2. dub. 38. n. 21. 4. tr. 2. c. 3. n. 3. Cross I. 4. n. 904. with Azor. And it is evident from c. 1. de... But if they are poor, to them let there be distributed as to poor people. These consanguineous indigents, however, a cleric can prefer to other poor people, even more needy ones (whatever may be said [c.]). Reason, because, as he rightly observed [cit. art. 2. n. 2. cum lib. 5. c. 4].

Conclusion 3. thus wrote: The bishop, after subtracting what pertains to decent sustenance, and after subtracting these things, namely, those that pertain to the grace of piety (note) and charity, is bound to distribute the remainder either to other consanguineous indigents or servants; he is obligated to give the leftover to the poor under a mortal penalty. This is expressed in the decree issued by Cardinal Polo, Apostolic Legate in the year 1566 at Thomassin's De Ecdesiastica Disciplina, volume 3, page 3, chapter 32, where it was prescribed that beneficiaries of England (just as formerly S. Gregory had prescribed when instructing). (Augustine, apostle to the Anglo-Saxons): Ne sumptuum moderatio avaritio tribuatur, quidquid eo fructibus ecclesiarum, deductis iis quò earum muneri bus sustinendis et ipsiisque atque ipso- rum familiaribus necessariis supererit, id omne juxta illa quò B. 4. n. 904 cum Azor adque familiam spectant parentes fratres nepotes et alii consanguinei. Moreover it is adverted in tractatus quartus, liber secundus, caput tertium, nota tertia et sexta, et citatum cum aliis, quod si beneficiarius statum suum mutet ex assumptione ad beneficium, tunc potest subvenire consanguineis saltem proximioribus ut ipsi quoddammodo decenter vivant juxta suam dignitatem.

Hoc tamen rectè ait Roncaglia loc. cit., procedere pro Episcopis, aut assumptis ad similem dignitatem, non verò pro parochis. Question. III. In the distribution for preferring, let the poor of that place be preferred, wherein is the benefit?

They say that although it is more fitting to distribute goods to the poor in one's own locality, nevertheless there is no obligation regarding this; unless there are poor people, or those at the extremity, or even laboring

under great poverty, there. But 1. 7. c. 14. q. 2. Bonac. de bonaf. d. 4. p. 2. n. 3. et Mol. d. 145. cum Navarr. hanc limitationem negant, et censent, satis esse, si bona superfla in quaesvis pauperes (intellige aequae egenos) erogentur; etsi testataes expresserint, vel satum tacite significarint. Reason, by which the canons (in the ancient chapter Sancimus 84. cras. 42. Question 2.) indistinctly command, that it be done for them, whether for citizens or foreigners.

And this seems sufficiently probable, because the poor do not have a place, and it is not established that they have any special right to those goods. Mol. excipit, si aliud exigat bonum commune illius diocesis, puta, si subveniendum sit collegio educandorum, etc.; quar. IV. Whether benefactors can reserve superfluous goods for future pious uses?

Navarr denies that such superfluous things should be distributed immediately. But diversely teaches S. Thom. 2. 2. q. 185. art. 7. ad 4. (whom follows P. n. 207. with others), saying: If anyone, not insinuating necessity of provident poverty, from those things which are superfluous buys for the Church's revenue possession in future for utility of the Church and necessities of the poor, he acts laudably. Holzmann, loc. cit., however, rightly observes that in such a case caution should be exercised, lest, upon death approaching, such revenues might perhaps be seized by the consanguinei. Question.

V. A cleric, who has from his own source, by which he lives, may sustain himself from the revenues of the benefice? Some few deny it; but it must be affirmed according to Habert of Maubec, just. t. 4, o. 24, in fin. Petrocor. de bona fide, caput ultimum, quarto octavo, clause numero viginti septem, etc., communiter.

For indeed it is said that they would rightly have demanded nothing concerning offerings. Finally at the third time, namely after the clerics began to have their own patrimony separated from the Episcopal table, and benefices were credited to them, it became customary for them, having a separate patrimony, to live on the goods of the Church. And this is indeed entirely consonant with natural reason; for it is just that he who serves at the altar should live from the altar; and joined to this: Who ever fights but expects a reward? In Apocalypsi primo.

Heart. Should those who, serving in the republic, have salaries unjustly receive them? By way of accident, it is that they are rich or poor. And this judgment he expressly holds, D. Thom., II-II, q. 185, art. 7, ad 3.

But truly, the limit is set by S. D., if a case should arise in which someone would be poor in grave necessity; for then he says: In such necessity, a cleric would sin if he wished to live from the goods of the Church, provided he had patrimonial goods from which he could live. The reason is evident, because then, already having surplus according to his station, he is bound to assist gravely needy paupers. Seek. VI.

Whether, as beneficiaries are bound to expend superfluous resources for pious uses, so too are pensioners? They affirm: in book 2, chapter 2, doubt 47, page 424, and in chapter 42, paragraph 2, point 44, section 2, note 147, with Mol. et : otherwise, if it is merely laical by title merely secular, and given to laics for services rendered, such as to princes, knights, etc., or if given to clerics for some temporal office, namely that of cantor, procurator, etc., the reason being because since this obligation is annexed to the revenues of the benefice, that ecclesiastical pension, after deducting the fruits of the benefice, passes with the same burden. However, Lugdunensis denies this sufficiently probatively in his decree 4, note 32, with Vasquez. Gigas, ap. ; whence these fruits do not bear with them an obligation, so as again to be applied.

The same [Mastrius] says in d. 14, q. 2, a. 3, n. 69, with Azor, etc., he commends the equitables of S. Jacob Calatava, Alcantara, and S. Stephen Florence, etc., by which from Gregory. XIII. It has already been conceded to testify. 492. — Is it asked whether beneficiaries, spending surplus revenues of the benefice on profane uses, are bound to make restitution? This question is much debated among the Doctors, and therefore I shall dwell longer on its discussion. The first opinion, which is probable and very common among the more recent [scholars], denies it.

They hold this, S. titulus 2. caput 5. sectio 3. caput 2 4. dubium 6. nota 43. Mol. tom. 4. tr. 2. d. 143. Cabbas. Theor.

Jur. lib. 2. cap. 26. n. 7. Sporer from the 7th precedent chapter, canon 4, note 143. Azor, p. 2, lib. 7, c. 9, de beneficio, q. 2, a. 3, n. 2. Mazzott. tom. 2. pag. 419. 2. d. 37. n. 2. d. 4. quæst. 3. n. 34. de just. n. 196. cap. 2. n. 155. cum 4. sect. 1. n. 2. cum Soto, Gers.

Covarr. Cordub. The greater part of them reason thus: Formerly all clerics lived in common, and ecclesiastical goods were distributed to each one according as was needed for his sustenance; the remainder was applied to the construction of churches, and to the support of the poor. But Pope Simplicius, who was created in the year 465 in the canon of the revenues, book 28, chapter 12, question 2, because, being chilled by charity, perhaps

the bishops would not be so faithful in such a distribution, divided the fruits of ecclesiastical goods into four parts, applying the first to the bishops, the second to the clerics, the third to the construction of churches, and the fourth to the poor.

That was confirmed by Gelasius in the chapter "Concesso" 26, and by Gregory in the chapter "Cognocimus" 29, dictum causae 12, question 2. Hence it is said that, although before this division clerics had no right to those goods, yet after the division they acquired dominion over them, since those goods were assigned by the Church for their own use. This is confirmed by the council chapter 12 on Reform, in which it is prescribed that the beneficiary who omits the recitation of masses will be deprived of half the fruits, which were also intended for the maintenance of the prebend and residence. Therefore, in order to argue, the council assumes that the cleric has truly acquired dominion over their own fruits.

From which they conclude that the obligation which beneficiaries have of expending superfluous goods for the poor does not arise from justice, but from the virtue of religion, which does not obligate to restitution. Cabassutius vero V. c. cum Azor, ambulans via incedens, hanc sententiam tueri studet; nam dicit, hanc obligationem beneficiariorum erogandi superflua in usus pios non esse de lege naturalis justitiae, quia fundatores beneficiorum libere et sine ullo pacto clericis suis fructus donant; sed tantum de lege Ecclesiae, qua intendit ipsos clericos obligare virtute religionis vel charitatis ad applicandos hujusmodi superfluos fructus in usus pios tamquam bona dicata Deo et ex pietate donata. Neither does it hinder that a person may intend that his heir dissipate his goods to an insignificant degree, if nevertheless he should do so, that such a person will not commit the same sin against justice, because that was not the intention of the testator expressed in any pact. And for this sentiment it cannot be denied that there was 2. q. 185. art. 7., as they judge in 6. art. 12. ad 3., where they distinguish between ecclesiastical goods assigned to the poor, and those which are assigned to clerics as praebenda, of which he says that they themselves do not deserve restitution.

These are the words of the Holy Doctor: Therefore, it must be said otherwise concerning those ecclesiastical goods which are principally attributed to the necessities of the poor and their consequent necessities, such as the goods of hospitals, etc., and other similar things; and otherwise concerning those goods which are principally attributed to the uses of the ministers, such as clerical prebends, and other suchlike. Nam in primis peccatum committitur non solum ex abuso, sed etiam ex ipsa conditione rei, dum alius in usus suos assumit quod est alterius: et ideo tenetur ad restitutionem tamquam defraudator rei aliquo. In secundis vero peccatum

committitur non nisi per abusum: sicut et de bonis patrimonialibus dictum. Wherefore one is not bound to restitution, but only to the performance of penance.

The second opinion holds that the beneficiary is obligated to restitution; thus they feel in question 1, article 4, number 4, treatise 4, chapter 3, number 3. Bon. de benef. d. 4. p. 2. n. 9. Petroroccus, tome four, same title, last chapter, question seven. Haberret de justitia caput 24.

Concina tom. 2. diss. 6. c. 48. Roncaglia concerning the preface. Seventh chapter, number six. Reg. in praeci cum item Panorm.

Ring. Angel. Major. 4. n. 1. They say that before the supposed division, the clerics were by no means at all lords of the goods of the Church; since everything then was common; hence, whatever they themselves beyond the necessary sustenance claimed for themselves, had to be restored.

Therefore, the division of precepts should have been proven by the Simplifiers; but there is no trace found of this division, rather (Habert says in loc. cit.) many suggest that this division was not carried out, since it does not appear anywhere that their portion was assigned to the poor, or to the buildings of the churches. At least (they say) this much is certain: until it is proven otherwise, the poor retain their primordial right to those ecclesiastical goods, and beneficiaries are bound by justice to minister to them from surplus resources. Nor does it seem likely to Cabassutius that the testators intended their goods to be left in the dominion of clerics; rather, they should be presumed to have wished to leave them in the hands of the Church, so that she might later through her own prelates assign those goods as ministers, by which themselves might be sustained and surplus provided for the poor. And that this was the intention of the founders, testifies the council of Aachen in the year 846, where in canon 146 it is said: Faithful ones, for the remedy of their souls' salvation, with their own resources made the church a rich and abundant treasury, so that thereby the soldiers of Christ might be sustained, the church adorned, and the poor refreshed.

Whereupon many AA., including Alexander, constantly hold that they who were never beneficiaries have never acquired dominion over the fruits of benefices. But whatever may be concerning the will of the testators, about which it is uncertain, inasmuch as it ought to have been certain, so that it could certainly be said that they transferred dominion over such goods to clerics: at least the Church, which has supreme dominion over ecclesiastical goods (as all admit), did not wish her own ministers to

acquire any other dominion over them except limited one, with the burden, namely, of rendering a superfluous surplus to the poor; and this is very probably held according to the Tridentine law, as above, by Palud, and Habert does not dissent from it. Quia igitur, si quis centum aureos dederit aliquo ad peregrinationem agendam cum pacto, ut quod superest pauperibus eroget, ille acquirit dominium centum aureorum sed gravatum, ita ut ex justitia tenendum sit superfluum pauperibus elargiri; ita et beneficiarius. That is, however, how the Church reverently regarded this dominion; if it conceded it, it would concede it limited beneficia to beneficiaries, with a certain burden of distributing superfluous goods to the poor, which was attested by many testimonies.

Gratianus in Causa 42, qu. 1, post., c. 25 et 27, quaerit, an mensa communis scindi potuerit in plures praebendas? He responds affirmatively, saying that just as formerly superfluous tables for common use were distributed to the poor, so too today superfluous provisions of any benefice, as Gratian shows, namely, just as in ancient times the justice of the Church had superfluous common goods to be distributed to the poor, so also they have them now after they began to possess benefices. Ita et præbenda ecclesiasticorum (verba Gratiani) eadem charitate manente pie et religiosè poscantur distribui; nec tunc rebus ecclesia ut propriis, sed ut communibus utilitatibus deserviendi. Whence it is evident that prebends were not instituted to be totally their own proper possessions, but rather to bear a real burden for the use of other pious persons.

Item in the council of Milan, fourth year of the reign of Charles Borromeo, page 39, it is thus stated: If however those who obtain ecclesiastical benefices, for whose benefit the fruits thereof are attributed, if they prove more abundant than what is required to maintain life, they should not doubt that this abundance is intended for that end, so that in addition to what suffices for sustenance, there may also be provided means whereby the poverty of the needy might be alleviated. And the same was established by the bishops in the capitularies of Charles the Great, lib. 6, cap. 58, on page 429 of the concordance, where it is stated: The bishop shall have the power over ecclesiastical affairs to dispense with regard to all who are in need; he himself also shall partake of those things of which he stands in need. Item D. Petrus Damianus apud Baronum anno 4055 sic quemdam Episcopum monet: An ignoras, quia ad hoc ecclesiis praedia conferuntur, ut ex eis pauperes sustententur. Then he adds that in earlier ages the lands given to the Church were sold, and the proceeds distributed to the poor; but later, as time proceeded, it seemed fitting for the rectors of the Churches instead to hand over the lands themselves, so that not only would the Church provide sustenance for the clergy, but also a means of livelihood for those in need.

Nevertheless, his objections notwithstanding, it cannot be denied that the first opinion is sufficiently probable, especially by authority of St. Thomas (according to his own words, supra referred to), who supposes and asserts as certain that the aforementioned division of goods was made, and therefore he absolutely excludes the cleric from restoration if he deprives himself of ecclesiastical goods. Moreover, as some learned Neo-Thomists write, Pope Simplicius did not introduce that division himself, but rather found it already introduced; and he merely prescribed its execution, as is clearly evident from his letter written to Florentius and other bishops against Bishop Gaudentius, who had usurped besides his own portion three other parts for himself. Hence the Pontiff decrees that all administration of such goods should be removed from him, and that he himself should be held responsible for restoring the portions which are explained over a period of three years. At the same time (the words are those of Simplicius), concerning the revenues of the Church or the oblations of the faithful, let no one permit to be done what is uncertain for the ignorant: but solely to him may this fourth part be remitted.... And we specially command him, that he restore those three portions which he says he has only claimed for himself during a period of three years. Letter of Simplicius to Harduin, concerning the collection.

Commentary tantum pagina 804. Wherefore the supporters of the prime opinion conclude not incongruously from an exact division, that goods which have already been attributed to clerics now belong in equitable dominion. Which seems to be confirmed by the Tridentine, as above, session 24, chapter 42, de Rof. verbis; with those words, he made his own the fruits, which even in reason and residence he had given. Furthermore from the council.

Laterensis V. sess. 9. We have stated in the place where it was said that a beneficiary does not make use of his fruits if he omits the office after six months from possession of the benefice; therefore, if he does not omit the office, then he already makes use of his own. Questio. VIII.

He, having received a gift, who receives these superfluous goods from the beneficiary, sins gravely and is bound to restore them? As regards the matter of restitution, they deny that he is bound to it, all of them. AA., qui in praecedenti quaestione censent, beneficiarium non obligari ex justitia ad talia bona in pios usus eroganda. We nevertheless think that a distinction should be made.

If the beneficiary is not made to pay import duties in order to satisfy his

aforementioned obligation due to such a donation, the receiver is under no necessity to restore it, since it is very probable, as Laym and Bon teach, that he will not be obliged to do so. Pauld et Rone, ut supra retulimus, quod beneficiarius bene habeat dominium fructum superforum, etsi gravatum onere illis in pios usus elargiendi. Therefore, if he donates them, I am donated, and from elsewhere he can now satisfy; but if he does not do this, it will come from his own malice, not from the acceptance of the donation, as rightly says Layd. d. 4. n. 48. If however, through such a donation, it is more clearly rendered due, we say with greater probability that the recipient is held to restitution, justly following our position, which we maintained, that the beneficiary is obligated by justice to give superfluous goods to the poor; for then, by accepting truly, the donor brings harm to the poor who have a right to those goods, as we said in a similar case, n. 449, and more fully we will discuss concerning contracts, n. 722.

I have spoken more probingly; for I do not deny that the recipient can be excused from restitution on account of contrary probability of judgment. Understand what part just proportion such probability (4) opens when faith is in doubt; but if indeed he has embraced good faith, it is probable rather than tenebrious concerning something to be restored, according to just decree lib. 1. n. 35. But when admitted, the contrary sentence, as probable, namely, that (1) according to Ex 10. n. 8., a greater part should be restored to the poor, since the sentence which gives more probability to the author seems just; for the beneficiary and necessary poverty of justice to give back what has been taken away—let there be no sin against justice —now a doubt arises: whether the receiver sins by cooperating in the sin of the donor against religion or charity, as the authors of the aforementioned sentence suppose? They affirm, Mazzot, tom. 2. pag. 419. et . 38. n. 14., citans Navarr. But more probabiliy (according to that sentiment) we say with Lugo, d. 4, sect. 3, n. 49.

Busemb. l. 4. n. 483. de just. n. 221. et c. 2. punct. 41. §. 2. n. 143. accipientem non peccare, neque contra religionem, neque contra charitatem, nisi petat vel inducat ad donandum. Not against religion, because then he himself cooperates very little in the sin of the donor; although dominium over the thing is not transferred without its acceptance, yet the sin of the donor is completely consummated by the very offering itself, even externally; accidentally it stands that the offering may have an effect or not, through acceptance or rejection on the part of the one who receives; just as the murderer does nothing to diminish or add to the sin, which from the lethal wound inflicted will result in death for him who suffers it, whether he dies or not. Neither against charity on account of the harm that results to those poor people from that donation,

because charity does not obligate a man to avoid foreign injury with his own equal loss, as Lugo says in the aforementioned place number 50. 'An autem regulares, facti Episcopi, possint libèrè disponere de bonis ecclesiasticis, et patrimonialibus?'

It is less probable. See what is said in the fifth chapter concerning the state of Religious, number two, where Salmeron and others according to that opinion speak about patrimonial goods. ## ON THE ACQUISITION OF DOMINION. 493. — There are three ways by which dominion is acquired: 4. By natural law, or by that of nations. 2. By civil law or canonical law, namely through prescription and usucaption. 3.

By private will, through contracts. Another mode could be added, by right of war; but this belongs more properly to the law of nations. By the law of nations, dominion is acquired in several ways (4). (1) Those who in the Institutes of Civil Law enumerate the modes of acquiring dominium differ both in name and essentially in reality from Roman law. Si excipias occupationem et traditionem, reliqui omnes modi, qui hæc à S. Alphonso recensentur, in jure novo nomine accessionis notantur.

There are also general rules of Gallican law, which agree with specification, accession, and even commixture of the old law. In the civil code provisions on the acquisition of dominion generally: Art. 711. Realms are acquired and transferred by inheritance, donation inter vivos, and testament, as well as by contracts. Article 712.

By accession and prescription. Article 516. Whatever has been added to a movable or immovable thing by nature or through superadded industry, belongs to the owner of the thing by virtue of accession. And 1.

By occupation (1), according to § [near] Institutio de rerum divisione, where it is said thus: For that which before belonged to no one is naturally conceded to the occupant. What about the treasures discovered? See below n. 602. What about hunting and fishing?

See n. 604 and 614. It is certain that all good things found must be restored to the Lord certainly, if this one is found. Et vero post inquisitionem, si dominus non inventus fuerit, sit obligatio restituendi res inventas pauperibus? There are three opinions present.

See Doub. 5. n. 603. 494. — II. Dominion is acquired through Nativity (2), by which our [creatures] are made that are born from their own animals, according to § 4. Likewise in the same chapter at the same place §. 495. —

III. Altuione (3), quà si aliquid latenter et insensibiliter ad tuo fundo adjiciatur, tibi acquiritur.

Otherwise, if a part of another's property is openly added, for then it would itself pertain to the same [person], according to §. Furthermore, from the same place. It is also established in ibid., that if the channel of a river deflects to another part, the new channel will be public, or that of another person, if this one were the master of the river; but the old channel will increase for those who have fields on both sides. (1) Art. 589. Goods belonging to no one or to persons without heirs who have died, or whose inheritances have been abandoned, pertain to the res publica. Article 713.

Goods which lack a lord are eaten by trust. Art. 714. Things are given to one who has no owner, whose use is common. Art. 584.

Doves, rabbits, and fishes passing through another dovecote, pond, or rabbit pen become the property of this lord, unless they have been attracted by artifice or fraud. Note, according to the custom of articles 589 and 713, as well as article 713 derogates such that immediately fishes, birds, wild animals with wings, which are said to be nullius, first become the possession of the occupant. — (2) Art. 547. Fractured restitutions and industrial lands of regions civils and pastoral produce pertain to the lord by reason of accession in law. (3) Art. 556. Which land is gradually and insensibly augmented by the very flow and course of rivers and streams, belongs to the alluvial territory and pertains to the riverbank. Article 557.

Likewise, if the bed insensibly turns toward another part, the abandoned bank regards itself as pertaining to the bank of another river, so that it may demand the lost land of the other river. Article. 558. The right of alluvion does not obtain in lakes and stagnant waters. Art. 559.

If you wish and a notable part of your fund has been suddenly drawn from it and brought to the property of your neighbor, the part taken away remains yours provided you recover it within one year. Art. 560. Any island whatsoever in a river that is swift with ships and rafts regards itself as belonging to the republic, unless there be a title or prescription to the contrary. Art. 561.

The island however born in the river, which is impeded by swift ships and rafts, is unequal; it belongs to the riverbanker from whose side it has been formed; but it is also the property of both bankside dwellers, since it inclines toward neither bank. Art. 563. If a river flowing with a new

channel encroaches upon and inundates a neighboring agrum that has been built up from an island, this will belong to the prior lord of the island, whether the river be navigable by ships and rafts or be such as is impervious to them. Article 563.

The bed of any river left behind for a proportional part and compensation reasons increases thereby, on account of which the fields are invaded by the new bed. On justice and law. §96. — IV. Specificatione (1), quando forma datur in alienam materiam, v.g., si bonâ fide ex aliena lana vestem tibi conficias, dominus illius efficeris, domino lana pretium solvendo; § Cum ex alieno eodem loco cum limitationibus tamen ibi expressis. The same holds if you make a precious painting or writing on someone else's cheap board or cloth, as it is stated in §34 of the aforementioned place.

Otherwise it would be, if you made wine from alien grapes: for those belong to the lord of the vines; so Croix l. 3. p. 2. n. 124. Croix also says in n. 123 that if you make flour from alien grain, the flour will be your own. And likewise he says, if you make a ship from someone else's wood, the wood is yours, n. 124. with Haunoldo. But thus, if you make a ship from alien stakes, then the ship could still be reduced back to its original stakes.

More probab ly adds Croix n. 123. cum Instit. et Haunoldo contra alios, ad acquirendum dominium per specificationem, bonam fidem requiri. 497. — V. Accessione (2), quando alicui rei accedit ornamentum, licet pretiosius, putâ, si vesti tuæ intexetur purpura aliena, vel tuo auro aliena gemma, purpura et gemma à te acquiritur. §. Si tamen, eod. loc. They limit the Doctors, unless the ornament can be easily removed. Cross ibid. n. 426. with Lugdunum 498. — VI.

Confusion, or commutation (3). Confusion is when (1) Article 570. If any alien material affects a new thing, the lord of the matter can always repeat his claim, provided that the price of the work be restored. Article 571. And if the form of the thing itself is materially much more valuable, it can preserve that as the principal one, provided that the price of the matter be restored to the master.

Article. 572. If anyone shall perform a work partly from his own material, partly from another's material, so that both remain intact and can yet be separated, that common part will belong to both. Art. 573. When a thing becomes common between the two lords of the material, it will be adjudged to the more frequent licitator.

Art. 574. When the lord, being vested alone with a new right of his own

thing, has the right to repeat, he will be free either wholly in that nature, quantity, quality, goodness and weight, or even the mere price itself will be demanded by him. Art. 577. If anyone shall have made a new thing from alien matter, he can be condemned to pay damages for what has been expended in acquiring them. (a) Art. 566.

The thing united by accession, although it is separable, pertains to the lord of the principal thing, provided that the price of the lesser thing be paid. Article 567. The principal thing is that to which another is added solely as an ornament or complement of its actions. Art. 568.

However, nevertheless, if a thing added is much more valuable, the Lord always has the power to demand that it be separated from the main thing. Art. 569. In dubio, quid sit in rebus per accessionem unitis principale, videndum; qua res alteram valore aut aliam quantitatem superet; hinc erit principalis. (2) Art. 578. That which is committed through confusion of fubae, although none of whose parts seems to be capable of being distinguished as principal, is separated if they are separable, demanding the lord by whom the confusion or commixture was effected when he was unaware.

If however they cannot be separated, possession of the confused or intermingled thing is acquired by reason of the quantity, quality, and value of each separate item. Article 579. And if indeed one thing is quantitatively equal to another but has a greater price, the master is principal, even though it be repeated, provided that the other is discharged after the proper thing itself is paid. Edit. two liquors, or liquified bodies (of the same species, or indeed of different species) so cohere into one, that after their confusion no part can be assigned which shall participate of both: as if wine were mixed with wine, gold with gold, or silver with tin, etc. But commixtion is when solids are mingled together, such as coins with coins, grain with grain, so that of any separate grain it cannot be said that it is matter of either.

Cross L. 3. P. 2. N. 146. His positis, sciendum quoad confusionem, quod si confusio consensu dominorum vel casu sit facta, tunc res erit communis et judicis arbitrio dividenda ex § Si duorum 27. eodem Inst. See 8th part, third book, chapter §, number 4, with Palao, Croix l. 3, page 2, note 417. If however confusion were made by another without consent or against his will, then dominion over the thing is acquired by you if the confusion was brought about through your act and to a greater extent pertains to your material part; yet still you are bound to pay the price of the alien thing, according to the said § 25.

Reason, because then the thing belonging to another is regarded as an accessory to your thing. Not however, if your part were small. . . cum. . . loc. As regards commixture, if this is money, there is an express rule that he who mixes alien money with his own does so with the intention of having dominion over the whole; hence, he becomes the lord of the whole, even without the knowledge or against the will of another: for in l. If foreign coins, according to the laws on solutions, are thus said: If foreign coins, inscion or against the will of the master, having been dissolved, they remain his whose they were.

But if they had become mixed to such a degree that they could not be distinguished, it was recorded in the books of Caius that he who received them became their owner; so that an action for theft would lie against the lord with him who had given them. Hence also, when a mixture which cannot be discerned is made through malicious intent, coins become those of the receiver, whether he be a thief or not. This, however, is to be understood when the greater part of the money belongs to the mixer; otherwise, if the lesser part or an equal part belongs to him, because then the whole heap will be common, according to Lugo, 3. p. 2. num. 418. And the same would be the case if the commixture had been caused by chance or with the consent of the masters, as we have said; see the dictionary sections 27 and 28.

That is to say, if, moreover. Instit. 499. — It is asked whether what holds true for coins applies to the mixture of other things, such as grain, legumes, etc.? The Glossa denies this in decree 4. If of another, Anacl. Theol. d. 5. q. 3. n. 28. et 29. cum n. 419. quia dicunt, id tantùm de pecunia statutum fuisse ob specialem rationem, quoniam pecuniae sunt in quotidiano hominum commercio, cui valde officere posset, si earum dominium, cùm miscerentur, incertum maneret.

But Lugo from the Decretals, d. 6, n. 64, and the Dicastery affirm that all things which cannot be distinguished after mixture are acquired by the mixer, on account of a general reason, which the Glossa assigns in d. 1. If of another's, namely that mixture is equivalent to the consumption of the thing. And this he states in lib. 1, n. 47, to be common with the edicts concerning the recovery of property. Since, as the mixer observes, he has either an intention to acquire dominion, or at least does not have a contrary will; and his part is principal.

Notandum autem, quòd si res extat in cumulo permixta sive apud furem, sive apud alium, domino illius prout habenti jus in re, retinentique

dominium unà cum fure, pro sua parte praè omnibus creditoribus est satisfaciendum; imò potest ipsemet ex cumulo accipere quantum suum est. Thus in chapter two, paragraph twenty, note one hundred fifty-seven, and in chapter three, point forty-two, note four hundred forty. With. And they prove from L. 3. §. Pomponius, ff. de rei vindicat., where it is said thus: If something of the same nature is so confused and mixed that it cannot be separated, not the whole but only a part thereof should be claimed. This indeed is probable; but no less probable is what Lugo says in d. 6. n. 66. and d. 20. n. 472. c. 23. n. 34. et §. 3. n. 26. (who considers the opinion to be probable.

He says in one place, number 24, item 5, that the Lord of the mixed thing will have an action imploring from the judge, so that from that aggregate he may adjudicate his part to him. 500. — VII. Edificatione (4), ex. §. Cum in suo, eodem. Institutum ubi statuitur, quod si tu ædifices in solo tuo de aliena materia, omne cedat solo, sed tenearis reddere duplum pretii illius materiae: et si ædificium ruat, possit dominus materiam illam sibi vindicare. See Cross l. cit. n. 428.

On the contrary, it is established in § 30, that if you build knowingly with your own material on another's soil, the building belongs to him, and you lose dominion over the material. From which it is concluded, in that case not even the price thereof can you recover, because a presumption arises that you wished to give it. But on the other hand, if it be established that you did not wish to give, according to L. 2, c. de rei vindicat. Then indeed, when the building is razed to the ground, you can reclaim your material both temporarily and even recover its price according to equitable assessment, as Croix number 430 with 38. ff. de pet. hæred. 504. — VIII.

Plantatione (2), ex §. 34., ubi statuitur quod si tu (1) Art. 335. If the possessor of a piece of land constructs a building or some other work on his soil using material belonging to another, it is feared that he will have to pay the price of that material (which the owner himself cannot recover), nor less according to the broad judgment of the court, repair any damages. Article 335. Constructions and plantations made by other works with alien hand and material belong to the possessor of the fundi, who has the right either to have them preserved or to have them removed and demanded.

If the lord of the soil demands that what has been constructed be taken down, let him expose the constructor to this; but if he rather wishes to preserve them, let him pay the constructor the price for materials and labor. Nevertheless, if anyone has planted or constructed works in good faith, the lord of the estate may not insist that what has been constructed be torn down; but either he should pay for the material and labor, or a

sum of money equivalent to the increase in value which the estate has thereby received, should be paid. (2) Art. 671. Trees high to be planted should be set at a distance established by law or custom, so that they are distant two and a half meters from the boundary line, unless they are high trees or living hedges. If you place a foreign tree in your soil, let it become yours: conversely, if you place your tree in another's soil, let his tree be planted there; but if roots have already grown, then do not plant. And there it is likewise established, that a plant, set near the boundary of another's land, which has thrown roots into that, is common property.

See Croix l.c. num. 432. Here it must be noted that an apple tree, planted in a foreign field, is not permitted to cut or prune its roots or branches extending into the owner's land, unless the other party, having been warned, refuses to have them removed, as Schneider and others say according to Croix d. n. 432. That which has been said concerning the plant is established concerning the grain sown, which also yields fruit, according to §. 32. And he who has sown with evil intent cannot recover his expenses, as Croix states in n. 432; for although letters of gold yield to parchment: today, by custom, Croix asserts in n. 434 that the contrary prevails. 502. — IX.

By perception of fruits (4), if they have been received in good faith, and the fruits have been consumed. § If anyone from a non-domine, likewise. Instit. 503. — X. By tradition (2), whereby the Lord wishes to alienate His property to another. §. By tradition, eod. Instit. 504. — Jure autem positivo civilis seu canonici acquiritur dominium per praescriptionem seu usucapionem, quae proprius dicitur de rebus corporalibus fieri.

Four conditions are required for prescription: I. Good faith. II. Just title.

III. Continuous possession. IV. That the thing may be prescribed.

I. Therefore, the condition is good faith, according to rule 2 in book 6, where one presumptuously believes the thing to be his own, no longer out of sheer ignorance but because he thinks it to be so. Hence, he who from the beginning doubts whether the thing is his own should not venture to begin acquiring possession. Si vero ad possessionem bonae fidei dubium supervenit, praescriptio non interrumpitur; modo interim diligentia adhibeatur ad veritatem inquirendam.

The same is held by Anaclet, d. 6, Question 2, m. 42, as more commonly and more probingly. See no. 541. 505. — II. The condition is a title of justice (3), for example, purchase, donation—Art. 672. If any trees or

hedges are planted within a lesser distance, an adjacent landowner may have the right to demand that branches extending onto his property be cut off, and he himself can cut the roots which he has planted in his own field.

Article 673. Trees situated in a common hedge are held in common, each possessor of the hedge being able to permit their removal. (1) Art. 549. The possessor of good faith makes the fruits thereof; but if it is of bad faith, he will render both the thing and the fruits to the lord. (2) The tradition is not a means of acquiring according to new law. The Roman law establishes the principle: Domains of things are not transferred by mere traditions to the lord, but only by true deliveries; purchases, donations, etc., were not ratified as valid until the thing was truly delivered; thus the Gallic law according to articles 711, 712, 938, 1138, and 1586 did not hold otherwise.

Edit. (3) Article 2267. The title is not admitted which labors under vitiating forms of substantiality. Article 2279. In mobiles rebus possessionem titulum locum habet.

Qui tamen rem perdidit, quatenus vel furto, potest eam evincere intra tres annos, salva actione possessoris in eum quem rei absumpsit. Article 2280. Si autem empta est in nundinis, foro mercatorio, auctione publica vel nis, etc., saltem rationabiliter, sive probabilitet praesumptus, etsi re vest non intervenerit. However, it is to be noted that a title is not always required, but only when there is a presumption against the possessor, as we shall say shortly.

To suffice for prescription, a colored title is sufficient. Cross 1. 3. p. 2. n. 498. with the common. It is likewise sufficient to consider the title as reputed, for instance, if you consider that the thing was reputedly given to your father. See Croix n. 499. 506. — III.

A condition is a continuous possession for a time determined by law (1). For if there be a title, immovable or movable consumable things are prescribed triennium, according to l. un. Institut. de usuc. ubi: cautum est, ut res quidem mobiles per triennium usu-capiantur. §. 2. dicit hoc esse inter praesentes, sed inter absentes requiri quatuor annos: sed hanc distinctionem nec textus agnoscit, nec caeteri DD.; nam . 2. c. 6. n. 22. cum communi, Verde Inst. Civil Law 1, Chapter 2, concerning usucapion. Lemma 8. n. 454.

Anacl. 1. c. n. 24. indistinctly there they say, that three years suffice for the prescription of movables. The same is said by Croix 1. 3. p. 2. n. 529.

And still concerning matters pertaining to the Church, as Mol. . . (contrary to Sylv. Covar. circa fin. cum 597. — Debts arising from movable things, just as fruits do, are prescribed in the same manner as movables, Croix lib. 3. p. 2. n. 522. cum Diosatill. et pluribus: quia accessorium sequitur principale.

Other actions, however, are not prescribed unless through thirty years. See Croix n. 539. If anyone possessed a ecclesiastical benefice or its fruits for three years, then it is prescribed according to the rule of the Chancellery extended in accordance with Croix 1:4 n. 689. Even if the title was null, as Croix n. 746 with New.

Spiri. Sa, contra alios: modò absit ingressus simoniae, à mentionner égalitium, non potest regari, nisi restitutum pretium quod pro eis datum fuerat. Article 1262. All actions, whether real or personal, may be prescribed in thirty years from the title. (1) Art. 1224.

In order that prescription may be established, it is required that there be continuous, not interrupted, peaceful, public, non-ambiguous possession, by name proper or by title of the proprietor. Article 1236. He who possesses for another does not prescribe at any time, Art. 1237. Nor does his heir.

Article 1260. He who possesses is presumed to possess for that, unless it is proven that he acquired possession for another's sake. Art. 1231. He who surrenders possession on behalf of another is always presumed to possess by the same title, unless the contrary is proven.

Art. 1268. All immovable goods, bona fide acquired, if they can be said to have been acquired according to a title within a period of 10 years, provided that the proprietor resides in the same territory as the curia where the thing is situated; but if he resides in another territory as the curia where the thing is situated, then are required 20 years. Art. 1266. If he has partly dwelt within and partly without, the time of his absence should be doubled to make up a decade; this is what is called prescription according to the rule of the aforementioned Chancellery.

He entered surnamedically, if anyone knowingly enters a benefice having been involved in simony himself or through a third party. Cross n. 709. See what has been said regarding simoniac entry, simon. n. 141. But otherwise, if it was from a third party, contradicting himself and then subsequently ignorant of the simony, as stated in n. 144, and as Croix says ibid., when . . and To exclude the benefit conferred by simony, it must be

complete on both sides, Croix n. 712.

See the aforementioned remarks, no. 106. Intrusio intelligitur, si ipse se immittit in beneficium sine vera collatione, aut institutione, aut confirmatione, aut expeditione litterarum pontificiarum; vel si post excommunicationem, suspensionem, aut amotionem, per sententiam saltem declaratoriam, etc. Vide Croix ex n. 713. Decennial possession has greater favors. See ibid. n. 715. 508. — Res vero immobiles non praescribuntur, nisi per spatium quadragenario annorum inter presentes, et viginti inter absentes.

Thus from common Bonaventure: It must be noted that "presentes" are said to refer to those who reside in the same province, while "absentes" refer to those who inhabit different provinces, whether or not the property is located in the same province or elsewhere, as stated in the law of Ulpius chapter on long terms, etc. However, note n. 76 along with others that it also considers absent even those who are within the same province but reside in different places and have their own governors, although they may be subject to the same prince or senate. Si quis autem partim fuerit praesens et partim absens, anni absentiae sunt duplicandi; v.g., si fuerit praesens octo annis et duobus absens, hi duo duplicandi sunt, et inde requiruntur 42 anni ad praescriptionem. — Quando autem non adest titulus ad praescribenda, sive mobilia, sive immobilia, requiruntur 30 anni. It is common with as regards the thing. Code of prescription, 30 or 40 years.

The same is found in the 8th treatise, book 1, chapter 4, section 1, note 3, with Molina and Lessius, who subsequently note that concerning movables without a title, nothing has been established in law to be prescribed. Whereupon it seems that even 30 years are required. 510. — For goods belonging to the Church or holy places to be prescribed, 40 years are required, according to Auth. Which actions. Code concerning the Sacred.

Ecclesiastical. But as regards the goods of the Roman Church, a centenary prescription is required; but it is doubted whether movable goods of the churches are prescribed by a triennial period? They affirm, as stated in Bon. l. c. . 2. c. 6. n. 42, cum et they prove from what has been said. Authority.

Those actions. They however deny it. Ostiens. Palermo, quando de integro.

Rest. eò quòd, ut isti dicunt, concessio locis piis facta à jure canonico, ut non praescribantur eorum bona nisi spatio 40 annorum, non distinguit

mobilia ab immobilibus. Both are sufficiently probable. 544. — It is said that possession continued (4); for prescription is interrupted either naturally, if the prescriber loses possession or a malicious intent supervenes; or civilly, if a lawsuit concerning the thing intervenes from another party; unless the other unjustly does this to interrupt prescription. with others. Si vero bonâ fide possidere incepisti, et supervenit dubium, teneris inquirere, an res sit aliena. And if you do not discover [this], you can proceed to possess and prescribe [the thing].

Thus Croix l. 3. part. 2. n. 482. Lugo d. 7. n. 47. If a virgin, caus. 34. Question 4. and c. finali de præscr. He says in Croix n. 548 that for the contestation of a lawsuit, the triennial prescription should not be interrupted. He also notes Dicastill., ibid., that anyone can be presumed to have begun to possess in good faith; and this holds true for the internal forum, even if the good faith arises from ignorance of manifest law, say Lugo. However, the contrary opinion seems more probable, which Croix holds, ibid. For when Lugo says at Croix n. 489., that if your faith is only venially bad, you can prescribe; and this is derived from the council of 512. — The prescription by a heretic with a bad faith is not more probable, as commonly held and stated by Croix n. 490.

Grotius et alii ibidem dicunt: si præscribens sit hæres hæredis; sed hoc probabiliùs etiam negat Croix cum Lugo etc. Secùs verò dicendum de successore particulari, ut emptore, legatario, etc., Croix n. 491. 513: — Per bonam fidem potest quisque præscribere libertatem à solvendo debito, si invincibiliter illud ignoret. Lugo d. 7. n. 49. et Croix n. 493. And thus also he prescribes the liberty from paying a debt, if within a certain time it is not exacted, even though he knows himself to be bound by it. Croix n. 494. with Mol. 34. ff. de acq. (1) Art. 2242.

Prescription is naturally or civilly interrupted. Article 2243. Naturally, if possessed by a legitimate proprietor or even by another for a space of time longer than a year. Art. 2244.

Possession is civilly interrupted when the possessor, for whose benefit prescription runs, is summoned before the tribunal or when proceedings are instituted against his goods. Art. 2246. Even though it is cited before an illegitimate judge, prescription is interrupted. Art. 2247.

Si in jus vocatio laboret vitio formæ substantiali, si actor à petitione deslatat aut vadiomonium deserat vel judex petitionem rejiciat. Digitized by poss. Cross n. 517. Possession however cannot be lost unjustly, unless the mind is manifest, as Lugdunensis says in d. 23, n. 59, and Croix

ibidem.

Reason, because, since possession consists in an external act, it is not lost except by another external act. — Moreover, it should be noted furthermore (1) that restoration to the whole extent is granted for four years after the lapse of the prescriptive period to certain privileged persons, so as to recover those things which they have lost through prescription, namely, to minors and to churches or other pious places; likewise to women and to simple folk, as Palaeus thinks, III, p. 2, n. 558. Likewise with regard to goods detailed by wives; likewise with those who approve, as others think, that they have not interrupted the prescription because they invincibly ignored it; but this Haunold denies. Fachinatus, et merito ibidem de hoc dubitat Croix cum Dic. Otherwise, disputes would indeed frequently remain unresolved, and easily the purpose of the law of prescription would be frustrated. 515. — IV.

The condition is that the thing be suitable for prescription (2); for things possessed by theft or through violence never are prescribed to the thief. However, things which a third possessor received in good faith from a thief do not acquire prescription even with title until a period of thirty years has elapsed between the present parties, and forty years if the parties are absent. If however the title does not exist, stolen goods never are prescribed to anyone, as Verde notes in loco citato and agrees: only goods of the fisc are prescribed for 40 years. Some things, however, can be prescribed in a certain manner, such as public goods and spiritual rights, according to which are the right of tithes, the right of conferring benefices, but not the right of patronage, Anacl. num. 17. 516. — Verde l. c. considers it probable that an heir can properly prescribe a thing in good faith, which the testator held in bad faith.

But as we have said above in n. 542., they deny this more probably; rather it should be noted that it has been condemned at Naples according to a recent decision of the Four Colleges, published in the year 1738. Although nevertheless permission is granted there for a legitimate prescription for thirty years from the day of birth: actionis. (deductis (1) Art. 225. Prescription does not obtain in minors and interdicted persons, except for explanations. Article 225.

Neither does it obtain between spouses. Article 225. It obtains, however, with regard to goods, the administration of which the husband has, save for her right in this matter. Article. 225.

Moreover, with regard to the disposal of dotal goods, conjugal times do

not obtain. Article 225. The prescription is suspended in marriage: 1° Whenever the wife does not have the right to an action unless it has been instituted by option for accepting or rejecting community. 2° Whenever the husband sells goods that are properly his own which he himself incised, a sponsor must exist and always whenever the wife can act toward the husband. (2) Art. 225. It cannot be prescribed a thing which does not fall under commerce.

Article 225. The fiscus, public institutions, and municipalities shall be subject to the same prescriptions and enjoy the same penalties as private individuals. Article. 225. The acts merely of license or tolerance do not found possession which prescription can render valid in the third possessor, in whom it is established that good faith is to be presumed unless bad faith is proved by open arguments (not merely presumptions) by the claimant.

It was decided that advocates and procurators of lawsuits cannot act for their own labors after a biennium; notaries concerning scripts not delivered cannot act after a biennium; but if the script has been delivered, all action is interdicted to them; apothecaries against the principal after a biennium; but against heirs after two months; and craftsmen after a year: servants and similar persons after two months. However, it is to be noted that this place has been established, unless a public or private document is produced; and furthermore, it is stated there that these things are decreed not by means of prescription, but through the force of presumed solution; whence it is inferred that a debtor who would certainly know that the solution had not taken place is released from at least some part of his obligation to solve, according to the aforementioned decision. 547. — The common opinion among jurisconsults and theologians is that dominion is also acquired in the forum of conscience by means of prescription, as can be seen in Croix l. 3, p. 2, n. 470; and Lugo holds this and thoroughly approves it de just. d. 7., ex n. 4.; moreover Molina 4., ex de praescript., where only bad-faith prescription is condemned, and good-faith prescription is clearly approved: faith, in these words: Wherefore it must be that he who prescribes has no alien conscientiousness at any time part. The reason is, because human law can properly transfer dominion from one to another for the common good, in order to avoid disputes and that the dominion of things not remain uncertain. But here the question is most usefully discussed in the 6th book, 4th part, 4th chapter, section 2, whether in places where the law of prescription does not prevail in the judicial forum, one may make use of it in the forum of conscience?

And first he says. Nevertheless, Enix holds that n. 8 allows for such a beneficial use of prescription according to common law, at least before

judgment, where the municipal law explicitly abrogating the law of prescription has not been clearly stated, as is expressed in the decision of Naples regarding the statute, which states that the heir of a testator, who maliciously holds possession against the rightful owner, can never be prescribed. Furthermore, as regards other prescriptions, statuted according to common law, there is nothing expressly derogated from in our kingdom; on the contrary, Verde l.c., Lemma 4, n. 424, holds that prescription is indeed observed in the kingdom: For the law (says Verde) requires it, whose opposite is not found in the holy kingdom. Wherefore it is concluded (as even the most learned Bishop of Tortosa has taught me), that we can lawfully make use in conscience of prescriptions of common law in our kingdom, and in every place where the opposite is not expressly held holy by municipal law. ## CAPUT I. ## OF THEFT. ## DOUBT I. ## What is theft, and what kind of sin is it? 518 What is theft? 519 Is it ever lawful to take away someone else's property for a good end? 520 Or only by necessity?

Question NoneI. Whether captives among the Turks can steal something belonging to another in order to free themselves from captivity? Question.

II. Whether a destitute person may receive alms before he asks? Seek. III.

Can it receive the thing of great charity? Question NoneIV. Is one held responsible for restoring it if he has consumed the thing taken away, even in the utmost necessity?

Question. V. He who takes by necessity, is bound to restoration if he has the means? And here it is asked whether a person who is poor satisfies his obligation if he lends something to the needy in return?

Question NoneVI. An impoverished person, not having recourse, be held later to restitution? When is it licit for a creditor to make compensation? Can servants compensate themselves for their own labors with wages? Follows the same n. 523 and 524. 523 Whether Christians may take away the goods of Turks? 548. — « Resp.

It is hidden and unjust the taking away of another’s property without the consent of a reasonable lord. What is more, if it is a sacred thing, it is called sacrilege, about which we have spoken above. If an open taking is made, it is robbery, which is distinguished from theft in its species. Although theft, ceteris paribus, is lighter than robbery and belongs to that category least involving matters concerning one's neighbor, nevertheless it is mortal; if the quantity be notable.

Thus commonly all. See Bon. d. 7. q. 8. ## From which it is resolved: 549. — « 4. He who receives another's goods either in jest or for his good or convenience does not thereby steal from him from whom he receives them; e.g., if a wife takes money from her husband to avoid gaming or dissipations; or wine so that she does not become intoxicated; or a heretical book, so that she does not read it; or gives alms to a servant not excessively great although the master would reasonably not be unwilling to give such alms, from whom nevertheless out of modesty or some other reason he dares not ask.

See 2. c. 12. 520. — « 2. He who, in extremis necessitatibus constitutus est pro se vel alio, alienum accipit quantum necessarium est nec furatur nec tenetur restituere postea sic absumptum siemdem re et spe indigens fuerit. The same is taught by Lessius, loc. cit., d. 4. Malderus et alii de necessitate gravissima.

» But this is more probab ly denied by others, according to S. Thom. 2-2, q. 66, art. 7, n. 7. » Sylv. p. » 2. t. misc. r. 20. C. Lugo d. 46. s. 7. Here note proposition 36, condemned by Innocent.

XI. It is permitted to steal, not only in extreme necessity, but also in grave necessity. It is certain that one constituted in extreme necessity can snatch what is alien, so much as suffices to liberate oneself from such necessity. Thus commonly DD. with . 2. Question 66. a. 7. Reason of the Doctor, because in such a case all things are common; for the law of nations, by which division was made of goods, cannot derogate from the natural law, which gives to each one what belongs to him for his own provision, while he is laboring under extreme necessity.

The same is said when necessity is proximate extreme, or equivalent to it; for in such a necessity, which is called another most grave one, or quasi extreme, one can provide for oneself with ordinary means, but not with exquisite and extraordinary ones. Thus commonly Lugo in Decretals, 16th title, section 7, number 154; 2nd book, 12th question, number 71; 5th book, 5th chapter, number 103, paragraph 3, section 2, number 38 with etc., 36th condemnation by Innocent. XI. n. 14. with Sylo. Azor, Croix l. 3. p. 1. num. 957. cum Card.

Haunold. et . Such a grave necessity is thought to occur when one is in a probable danger of incurring death, as c. 2, q. 3, and Vasquez. Val. 2. n. 195. Either in the danger of losing some principal member, or some sense, such as an eye, is considered. According to Croix, ibid.

Moreover, when one is in imminent danger of falling into perpetual captivity, or a punishment of triremis, or some very grave and permanent disease, or infamy. Lugo l.c. Sporer tr. 5. c. 5. n. 85. c. n. 274. For it is not necessary, as Lugo says, and . Th. and others, that such evils are incurred by an act, but it suffices that they proximately and morally certainly threaten; rather Holzrn. l. c. says that there must be a probable certain danger concerning them.

But it is doubted whether he who labors under necessity on account of poverty is thought to labor under the same necessity as one who is in danger of exposing his daughter? He affirms with Cajetan in the aforementioned place, n. 39, that no necessity can compel anyone to sin, since there is always some other way, at least by begging, to meet one's necessity. But what if some very honorable man would greatly blush to beg or even labor, and can he provide for himself from the resources of others? They deny this with Soto and Prado, saying that this necessity ought rather to be judged as grave, than as utmost, since temporal goods are ordered only to life, not to the preservation of honor.

They affirm however, c. n. 3. c. p. 375. and c. p. 4. n. 952. also Bann. et Serra according to Sed hic plures quaestiones occurrunt. Question NoneI. Let it be said that there are also in such a most grave necessity those who are captives among the Turks, so that it may be permitted to them to steal someone else's property for their own redemption?

This question hangs upon another: whether the rich are bound to ransom such captives? They deny that there is such a grave necessity for those who are captives among the Turks, so as to permit them to steal what belongs to others in order to redeem themselves; because they say these are not in extreme necessity, since freedom is not required for life, and a very great sum would be required to redeem themselves, and the price of redemption could easily be increased. They accept it only if the captive would otherwise die from sorrow, or some other afflictions. Item addit Sporer, quod si captivus petat eleemosynam, tenetur dives saltem aliquid dare pro ejus redemptione.

On the contrary, Fill. tr. 28, c. 3, n. 76, and l. 12, c. 8, q. 5, with Caj. and Major say that the rich are bound to redeem their neighbor, whom they know to be a captive. However, if absolutely they say, as the Doctors above and themselves. Concinae, qui disserens de dubio an divites teneantur hujusmodi captivos redimere sic ait: Captivitas ex se est grave malum ad quod tollendum plus minusve divites adstringuntur pro major

aut minori divitiarum abundantia. If the captivity joined something grave in the peril of losing Faith or life, or if the captive is useful to the res; then the obligation of the rich is graver when all these things are considered by them.

If the redemption of captives should demand the greatest sum of riches, I would not dare to impose such a burden of wealth upon anyone for leading captives back to liberty. This burden imposed upon the rich would enable the faithless to twist captives in their extremest evils, and swiftly despoil the riches of the Christians. Therefore, all circumstances must be considered, and according to their diversity, the rich are more or less obligated. However, in this doubtful matter, which has brought me great confusion, and in which the DDs speak so obscurely, I dare not myself decide anything.

It suffices for both parties to have proposed the moments. Let wiser ones decide. It is asked. Whether a poor person in extreme necessity can secretly steal money from others before asking?

Coninchius d. 27. de char. dub. 10. n. 458. censet, pauperem peccare mortaliter, si surripiat non petendo; quia non dicitur extremè indigère, qui petendo sibi subvenire potest. Lessius verò l. 2. c, 12. . 3. tr. 1. c. 1, num. 7. et P. Concina tom. 2. d. 6. c. 9. n. 14, dicunt, cum tenèri ad petendum, sed non peccare nisi venialiter, si non petat; quia dominus tunc non est invi- tus quoad substantiam, cùm pauper jus habeat ad illa bona, sed tantùm quoad modum, ordinem invertendo, quod non est amplius, quàm veniale. But rather it should be distinguished with Lugo on December 16th, number 140, who says: if that thing is not absolutely necessary for the alleviation of the pauper's absolute indigence, the pauper will commit mortal sin by secretly stealing it; for otherwise all other mendicants could impunely receive alien goods non-petitively, because they would perish unless someone else provided them with assistance, which is false. If, however, a pauper should be extremely in need of some particular thing, to such an extent that the Lord is bound to give it entirely, because by His not giving it, the pauper would perish; then this one, as Lugo says, by secretly taking it does not sin mortally, nor even venially, since He has a perfect right to take that thing in that case, according to S. Th. 2-2, q. 66, art. 7. It is asked thirdly.

Whether a person extremely in need can receive a thing of great value, if that thing be absolutely necessary for the preservation of his life? The first opinion denies this; this is held by Croix l. 3, p. 4, num. 953, d. 6, c. 9, n. 6, and it calls probable n. 54 (but Croix cites Lugo d. 46, n. 147, yet not well, because Lugo speaks only of the obligation of the rich, saying that

one is not bound to expend an extraordinary sum to lift a poor person from destitution; in which there is an unequal proportion, as we shall see below). The reason for this opinion is that charity, from which alone the rich are bound to almsgiving, as we have said above, does not obligate with such great expense. Et quamvis in extrema necessitate pauper habeat jus ad bona aliena, non tamen habet jus ad bona extraordinaria, sed tantùm ad ea quæ ordinarie sufficiunt ad vitam sustentandam. The second sentiment however affirms more truly, and Sporer holds it in Char. c. 6 n. 154; Lugo agrees with him loc. cit. n. 146, provided that through such an ablation the rich is not constituted in equal necessity, and Croix in the same place considers it practically probable.

Reason, because in extreme necessity, when all things become common, the poor have a right to receive everything that is necessary for preserving his life, so that (as it is taught in 2, q. 66, art. 7, ad 2) by such necessity his own thing which he receives may be made effective. The Saintly Teacher does not distinguish between a thing of slight importance and one of great importance. But neither does it hinder the common doctrine which Lugo teaches on day 46, number 150. 2. t. 3. c. 6. n. 4. num. 51. . tr. c. 2. q. 3. r. 3. tr. 8. r. 6. when he agrees with the common and the Council of Pavia, namely, that the rich are not bound to give a very large sum to liberate the poor from death, especially if he himself should have to decide according to his own status; because charity does not obligate under such great inconvenience; hence Lugo says on the same occasion and adds. Croix l. 2. n. 201. neminem obligari pro vita alterius expendere tres milia aureis, quattuor mille tamen, etiamsi non excideret ex suo statu: nisi (excipiunt Sporer et Croix cum cc.) esset persona conjunctissima, puta pater vel filius.

For it is answered that although this judgment and reason are true with regard to wealth, yet the reasoning differs with regard to poverty; for properly does Lugo n. 143 say that just as at first before the division of goods all things were common, so that each one could take from them whatever was necessary for him, but no one was bound by justice to give anything himself; so too in a case of extreme necessity, since then all things will be made common, it is permissible for the poor to receive goods from the rich, but the rich are not bound by justice to give. Wherefore in the case wherein a poor man is in the extremest necessity of some thing of great value, it is just that he receive it, because he has a right to take it; yet thus nevertheless the rich are not bound to give it, since they are obligated only by charity, which does not constrain when so much inconvenience results. That however n. 54 states, namely, that in such a case even the rich would not sin against justice by hindering the poor from receiving the thing, seems to me improbable: because the poor has a right to receive the thing, and consequently, so that another may not

hinder him from receiving it, he himself should not impede. Question.

IV. Is a man bound always to restore what he has consumed in extreme necessity? The first opinion denies it, which is held in tractatus 7, question 2, page 10, number 3, with Contra et Probabile: 8, tractatus 7, response 14; and equally probable is called Sporer de Prædicandis c. 5, number 102; and sufficiently probable they consider . 2. c. 16, n. 7, and . 8. tractatus 2, c. 6, § 2, n. 3. Reason, because when in extremity of necessity all things become common, a thief has the right to receive alien goods as he does to consume them, not otherwise than by newly appropriating them.

The second sentiment, however, which is most serious and more widespread, affirms this; and they hold it, according to C. Sylv. v. Theft, q. 5. Armil. same, vol. 5. n. 10. 12. cap. 7. et P. Concilii tom. 4. de furto cap. 5. quaest. 4. The reason is, firstly, because the obligation contracted through unjust acquisition does not cease due to subsequent necessity; secondly, because the necessity of a thief does not confer dominion over another's property upon him, but merely grants the right to use it and suspends the obligation to restore it.

Nevertheless, his objections notwithstanding, I do not think the first opinion improbable, because in such necessity a pauper, as is taught above cited, by surplice taking alien property makes it his own. In tanto casu obligatio restitutionis non solum suspenditur, sed etiam vere extinguitur per consummationem rei, quia dominus tenetur consentire consumptioni, si adhuc res apud ipsum inveniri potuerit. I say, however, that this must be limited, 1. If he be poor, not only in respect to the thing, but also in respect to hope, as we shall say in the sequel.

If a pauper absolutely lacks that particular thing, he cannot otherwise procure it, as I said in the preceding question. Question. V. Whether one who has taken another's property in extremis necessity is bound to restore it when that necessity ceases?

This question hangs upon another, namely whether a rich man satisfies his obligation by lending or giving to an extremely needy poor man something that he himself needs, on condition of repayment if he should come into better fortune? There is a triple opinion. The first affirms, and this is held: in the fifth book, chapter fourteen, note sixty-one; also in item two, note two hundred and seven; and Lugo considers it probable in case number four hundred and sixty-seven on day sixteen, where a thing has been given of great moment. Reason why charity, from which this alms-giving commanded proceeds, obliges only to the extent of assisting the needy

neighbor, therefore it suffices that assistance be rendered to him in some way so that he is freed from his necessity, and not that the thing be absolutely given away.

The second opinion denies this, and Azor holds it in 2nd part, 42nd chapter, 9th question, 4th article, ad 4th; also in 5th doubt, 5th number, 56th (when common, as he asserts) item in translation, 21st chapter, 7th paragraph, punctilio 1, § 4, n. 8. Reason, firstly because the rich is bound by the natural precept to give alms to the extremest indigent, and secondly because the obligation of giving alms involves an obligation to give; since however what is given on condition of a loan is not a gift but one obligation is changed into another. Because in the last necessity all things are common, hence the rich is bound by justice to give his possession to the poor man, although he justly could snatch it away from him against the will of the owner and make it his own, as teaches S. Th. 2-2, q. 66, art. 7. The third opinion is much more common and more true than those held in the Decretals, Day 2, Part 4, Number 9.

Note 182. Sporer from 7th precedent chapter, number 99. Cross at loc. cit., with Valerius who calls it certain, and Bans who considers the first opinion falsest, and with nos. 9 and 10 with Reg. Med. Otherwise, if another one has other goods, or a moral hope, or a probable expectation of obtaining them; then indeed it suffices to merely borrow the thing itself, because in that case he is not absolutely poor, nor could he absolutely take away the property of another and make it his own.

And this judgment he explicitly holds in Article 5, Number 17. Whereas supposing that the poor man is not lacking his own goods, as in the response to 1 thus to 2 teaches: each one is bound to liberate his neighbor from death according to his condition; and he has fulfilled this conveniently who lent money on loan; but he is not bound to remit in a case where that person could have been liberated by means of a loan. Thus, accordingly, it must be said in the first question proposed concerning the one who steals another's goods out of extreme necessity: Nothing is bound to restore it himself if he was absolutely poor at the time of necessity, as Lugo says, d. 46, n. 471, and punct. 3, § 4, n. 35 (contra 3, tr. 3, p. 4, c. 4, n. 7, acalios ap.). The reason is because, as St. Thomas teaches in the aforementioned place, one who is absolutely poor can lawfully resort to alien goods for his sustenance, and thereby accomplishes what he receives. They rightly receive it, c. n. 35., if the accepted thing, ceasing necessity, remains in its own species; for then they say that he is bound to restore it.

Reason, because, since the use of that thing alone was necessary to him for

alleviating his own necessity, he could not thereby acquire dominion over it. The poor man, however, who had goods from elsewhere, or a hope of obtaining them, as we have said above, holds well to restore the received thing and that consumed in necessity, because when he received it, he was not absolutely poor. Seek. VI.

Whether one who did not come to the aid of the poor at the time when he was in extreme necessity should later be bound to make restitution? The first opinion affirms, and the Cardinals hold this in chapter one. Crisi. d. 26. n. 76. with Hurt. 3. tr. 3. p. 1. c. 1. n. 7. also Prado and ibid. n. 33. and considers that P. Concina de eleem. c. 9. Question 40. to be more probable. Reason, because the poor in extremest necessity has a true right to the goods of the rich; and hence, if the rich does not hand them over, he sins against justice, and is bound to restore them.

Otherwise, if he did not sin against justice but merely against charity, he could himself hinder the poor without injustice so that he might not seize his own in such necessity; nor would he be bound to restore damages that would come to the children of the poor on account of such hindrance, who would thereby suffer death; and this no one says. Hence they infer that if the rich either impedes or neglects to give alms in such a case, he is still bound, once necessity is removed, to restore all damages inflicted upon the poor. The second opinion, however, is more probable than that which they hold, 2. c. 42. n. 25. Lugdunensis, de causa d. 46., ex n. 143., n. 182., cum communiter asserat, et c. n. 34., cum Vasquez negaret tenendum divitem ad restitutionem damnorum, si negligit dare eleemosynam.

Reason, because such an obligation arises from the precept of charity, which does not oblige to restoration. And although in time of extreme necessity a poor person has the right to seize goods belonging to a rich man, when those goods become common in that case, he nevertheless does not acquire their dominion; for then they are common not with respect to dominion, but only with respect to use. But you will say: if the rich is not obligated to assist the poor out of justice, how can the poor justly steal his property, either against his will or without his knowledge? I respond in the same manner as Lugo, as we said in Question.

III. Before the division of goods, all things were in common, and each one could take from them what was necessary for himself, but no one was bound by justice to give anything of them to himself. In the case of extreme necessity, it must be said in the same manner: when then all things become common, the poor can receive goods from the rich, but the rich are not bound to give them up out of justice. When, however, the poor has a right to receive, beyond all doubt the rich sins against justice if

he hinders him from receiving, and is bound to provide all damages, as well as necessities for children and other heirs that may be occasioned by such hindrance. Si vero non impedит, sed tanùm negligit dare, ad nihil postea tenetur.

Wherefore it is concluded that the poor can justly receive goods from the rich, but the rich are not bound by such justice to give. Chapter 4. Dub. 4. On theft.

Lastly, it must be noted that taking another's property by theft is forbidden solely in cases of grave necessity; cf. canon 36, as mentioned above. It is received, however, in proposition 36, number 40, that when a poor man, considering seriously, deems it necessary to take something slight from another rich man, not out of extremity but merely for alleviation of his non-extreme misery, the lord, judging probabilistically, will not be unwillingly disposed towards him with regard to the substance. However, correctly he observed that the use of this exception should not be easy, nor in a grave matter; for even the rich are reasonably displeased with this, so far as substance is concerned. 524. — « 3. Neither is he said to steal who receives just compensation, if otherwise he cannot receive what is due to him, for instance, if a servant cannot otherwise obtain just wages, or has been unjustly induced to serve at an unfair price.

See chap. and cap. 5. ch. 45. Note concerning compensation, I. That compensation can also be made in another species, if it cannot be made in the same one. Cross l. 3. p. 4. n. 967.

Note II. that compensation should regularly be sought through judgment; but to omit this is merely a venial sin, according to point 49, §2, n. 313 at the end with Innoc. XI. n. 4. and Croix n. 965. Note III teaches that rivalries, loss of expenses, and similar matters should be feared, as it rightly states that although certainty of credit is required for compensation, according to common teaching in Croix n. 962, yet many and serious authors admit that compensation can be made with probable credit in three cases: namely, when fame is compensated with money; infamy with infamy given; and a legacy left in the will not solemnly executed. But see what we have said regarding conscience in book 4, number 35, note (4), 522 — Note here proposed 37. Innoc.

XI. He said: Servants and domestic slaves can secretly steal from their master's storehouse to compensate for the greater labor they consider themselves entitled to receive in salary, which they obtain. Preface, single chapter, point 7, section 3, note 436, along with others, speaking of this

proposition, condemn it thus: I say that if a servant freely agrees without necessity to a lesser wage, afterward he will be unable to compensate himself; but if by necessity, in order to alleviate his poverty, he agrees to a notably smaller just salary, then he can. Reason, because the pontifical decrees do not understand to bind the servant against justice. Thus punct. 9. §. 2. n. 347. and prop. 37. n. 42. cum. 3. p. 2. n. 975. who says, that nothing at all can the servant steal after the contract, because the obligation to him has ceased; but it is answered, that when the servant is compelled to agree thus on account of his poverty, then he does not yield to his own law spontaneously, but by compulsion; and therefore his very poverty cannot excuse him, so that he should not at least pay him the minimum wage. When however the servant, being coerced by necessity, agrees to do so for a small price, he may compensate himself up to the minimum price, as it is said in n. 12 cum .

This nevertheless runs thus: nisi dominus alios famulos pro eodem parvo pretio jam justè invenisset; vel, nisi ipse famulus de se oblatus fuisset, et dominus ex pietate sive indigentia ipso uteretur. . n. 12. in fin. et . praec. c. unic. punct. 7. §. 3. n. 136. cum 523. — Dicunt II. The Salmanticenses say that if a servant by his own choice increases his due works, he can gain nothing thereby, because then his labor is reckoned as given in order to obtain the master's grace; but otherwise, if it be according to the will of the master either expressed or tacit, because then the rule must be observed, namely, that every worker deserves his own wages. Ita et de rebus aliis caput 1. punctuatio 19. §. 3. n. 318. cum Bassi et ita etiam Corrella cum Filguera, Consentitque huic Croix libello tertio pagina duodecima n. 976. 524. — An autem famulus, si evidenter sibi constet de justitia sui stipendii, possit tunc ex proprio judicio facere sibi hujusmodi compensationem? Croix denies in his third book, page two, note 976.

Dissertation 23, chapter 2, article 3, numbers 62 and 63, and proposition 37, number 1. And they say that a servant, or any other hired worker, should not compensate himself, except by the judgment of the commonest experts, or of a man very learned and versed in moral matters; hence they say that an average-level learned confessor's judgment is not sufficient for this. However, in the preceding point, paragraph 19, section 3, number 137, they say that a servant can also compensate himself for his own labor with his own judgment if he certainly judges himself to deserve a greater wage. Which indeed seems to me and to other recent scholars sufficiently probable; for if this servant, or any other mercenary, be a prudent man, fearful, and thoroughly fitted for right judgment, and certain about the justice of compensation, removed from all danger of hallucination.

But such things happen very rarely. Nor does it hinder the aforementioned

proposition 37, which was justly proscribed because it spoke too generally. — It is incidentally asked here whether Christians can licitly steal the goods of the Turks? Resp. si christiani sint in locis Turcarum captivi, certum est, posse eos surripere a dominis quantùm sufficit ut redimantur et ad patriam redeant, in compensationem injustæ servitutis et dæmorum quæ ratione servitutis patiuntur. Ita habetur ex decreto Congr.

SS. Office day 23. August 1630. a.m. Peyrin. de Priv. c. 4. n. 29 abi sic fuit declaratum: Qui captivi injustè detinentur ab infidelibus, possunt à dominis particularibus accipere sine injustitia quantum sufficit ad congruam compensationem, etiam pro sufficientia redemptionis, ab illis vel ab aliis qui sunt partes reip. sive Judææ, sive Turcæ.

A doubt arises whether any Christian can steal the goods of the Turks? Azor denies it in tom. 4, lib. 8, cap. 24, quaest. 42, and Fillastre in tract. 22, cap. 5, n. 423. But they affirm probably Mol. tom. 4. tr. 2. d. 37. lit. d. with Caj. 2. 2. q. 66. art. 8. also Victorel. Naldus, Duval, and others in tractate 43, rubric 98, who consider it probable.

Reason, because thus it can rightly be presumed that Christian princes, who have the right to deprive the Turks of all their goods and places usurped by them, will grant it to him. Felix Pot. de 7. præc. n. 2953. consensit modò (rectè limitat) non adesset inter Turcas tempus treugæ, vel salviconductas; vel nisi aliquis Turca degat in locis christianorum, sive liber, sive servus, maximè si adsit ut publicus negotiator sub fide regia. ## DUBIUM II. ### Quæ sit quantitas notabilis ad mortale peccatum? 526 Quæ sit quantitas gravis respectu ad diversa genera personarum, vel ad diversas circumstantias? 527 Id clarius elucidatur. 529 Quid de furto rerum exposilarum, nempe fruendum, et lignorum? 530 Quæ quantitas sit graus in furtis minutis? 531 Quid, si sit animus restituendi brevi tempore, cel parlem complentem maleriam gracem? 532 An sit mortale furari perum reliquia sacra. 526. — « VARIX câ de re sunt sententiae; alii nimis laxè 40 Aureos; moderatius Med. Resp. This must not be measured mathematically but morally, not only by reason of the value of the thing taken away, but also by reason of the circumstances pertaining to the person from whom it is taken: for if indeed a serious injury is inflicted upon him or at least Christian charity grievously wounded, how much does one, or even two, golden pieces seem to matter in respect to very rich people, nay, and even a king; but in respect to moderately wealthy people, about four golden pieces, or perhaps a half-imperial: in respect to mechanics, two; in respect to the poor, one.

Thus now many with Bon. [omission] Hence resolved: • 4. A grave peccatum est auferre rem parvam domino valde proi- cuam, v.g. sartori

acum, quam unicam habet, nec habere aliam potest quia se alat. . 2. c. 42. d. 8. - 2. It is a grave matter (even though not in the species of theft), if the thief knows that through his casting away the small thing, great trouble will follow for the lord; namely, because it greatly affects him, and no similar recovery can be made unless the thing has absolutely no significance at all. See Bonaventure, d. 2, q. 8, p. 4, 527. — As regards this point, namely, what constitutes grave matter in theft, it is profitable to elucidate here more fully the nature of the required knowledge for practical application.

Whatever anyone may say, it is common among the Doctors and does not seem to be able to be denied that, for determining the gravity of this matter, an absolute quantity cannot be assigned indiscriminately to all; but it must be measured respectively according to the circumstances of person, thing, place, and time; since the gravity of theft consists in the amount of damage inflicted upon the proximate party, what may be trivial with respect to one will be grave with respect to another. Therefore, as St. Thomas says in Book 7, Chapter 8: In the loss of a single chicken, the poor man is burdened more than the very rich would be burdened by a thousand marks. Therefore also it is said in the third book, third part, fourth question, fourth article: When and concerning a common thing, that to take away a single coin from a tailor may sometimes be a serious theft, if he who lacks it would not otherwise provide for his sustenance. Moreover, for making just estimation of this gravity, rightly do they say that it is greatly to confer with the judgments of the wise men, whose greater authority seems to me to constitute greater probability in this point.

Wherefore I have diligently collected diverse opinions of doctors; and that I do not repeat plurally their citations, I here simultaneously refer to all AA. whom I observed. These are indeed 2. cap. 42. ex n. 34. Lugo eodem titulum die 16. nomen 27. et 28. tractatus tertius partis quarta capitulum quartum numerus 3. quaestio secunda parte quarta numeralis 7. capitulum decimum numeralis 239. parte quarta capitulum octavum sectio quinta. P. Conoina t. 4. cap. 3.

Sporer from 7 preliminary chapters chapter 5 according to number 34. Hollom. idem titulus caput quartum numerus settecentos tredecim. Runge. same title. c. one. quaest. four. Amacl. tr. 9. d. 5. qu. 4. n. 8. . 10. n. 288.

Wigandt tract. 9. ex. 3. qu. 2. Cross lib. 3. p. 4. n. 987. pag. 397. 8. tr. 2. cap. 2. n. 2. q. 7. art. 5. n. 5. 5 c. 46. a. 3. Fault. Power of 7 previous chapters chapter 3 number 2648.

And since these authors, in assigning a serious matter, make use of various names for money; hence it is necessary to refer to several species of money which they themselves name, and their assimilation thereof, so that the same DD may explain them. Pazius sive Paceus juxta . Royal according to ; and to the same value or approximately, Julius, Argenteus, or our Charles is reduced. Florens, according to Lessium et Amacl., amounts to four Regales; according to Lugonem, five; but according to Filius, it is otherwise in Chapter 4.

Dub. 2. On theft. Six Royals. According to Bus., imperialia juxta sex regales valet octo. Gold according to ; and to this is reduced, or approximately so, Shield, or our Duchy (4). Commonly the Doctors say, in theft that is a serious matter, which would suffice for someone according to his condition on one day for his own sustenance and that of his family; in which, as Croix well observed n. 985., cum et atis, not only is food reckoned, but also clothing, and habitation.

But this rule, since it is very obscure and confused, and cannot be universally valid for all, we therefore present the Doctors who assign grave matter to different kinds of persons. And I. With regard to the poor mendicants, Habert assigns for grave matter a few nummi; and so Bus. also in like manner and Diana at Lugo. II.

Regarding the poor who labor, generally speaking, they say. Others, however, speak more distinctly; Rone and Habert assign one Julian as a serious matter. Others, however, more commonly say that there are two Kings, both for the miners and for the craftsmen; or mechanics; thus . . and so does Diana at Lug. However, Sotus and P. require more than two Regales for materials considered gravely important by artisans; they also maintain this. Filiuscoius requires three Julii, while Lugo requires four Argentines.

Hence I say that for the fossors two Regales suffice; but for the artifices or mechanics it is required for a heavy matter at least two and a half Regales, if they themselves daily earn similar or greater profit. However, Habert rightly observed that if a worker barely sustained himself by earning seven or eight ases each day, such a sum would be burdensome for this reason. III. Regarding those who live in moderate or common wealth by their own revenues, both the Council and the Ronan assign three Julian years as a serious matter; more commonly, however, Buscensius with Pelayo de Navarra . . . with . . .

But Filius extend[s] [it] even to five Royal [sums]. However, he rightly notes that for the sake of greater clarity it is necessary to say: a royal or Julian or silver or Carolingian coin should be approximately equated in value to a French franc: 1/3; and to a German thaler: 14 kreuzers (Rhein-Fuss) or 13 kreuzers (Convention-Munich). Those who live on their own revenues, and live so strictly; for these I certainly consider three royal coins as grave matter, nay even less for those who miserably sustain themselves and their families. On the contrary, for a person absolutely opulent, Sporer requires one florin; whereas Lugo needs six or seven argentines. As regards merchants of slender fortune, I consider it a serious matter two and a half Royals.

For those, however, of moderate fortune, I think one Imperial, or eight Royals, are required; they require three florins. IV. Regarding the most illustrious magnates, Sylvest Ang. Arag.

Cordub. requirent pro materia gravi plus quàm duos Aureos; . . Reg. et Diana, Et hoc procedere, etiam respectu regum, dicunt et Lugo; quia, licèt respectu ipsorum unus Aureus videatur levis materia, reverà tamen (ut ajunt) gravis est, spectatis regum oneribus et muneribus. . Alii verò probabiliter, dicunt requiri saltem duos Aureos, ut Croix, Bonac. . Corduba, et communi, ut asserit . Finally, with respect to some community, they consider one aureus always to be a grave matter. But Croix probabiliter dicit, quod si communitas esset valde opulenta, posset materia gravis aliunde extendi, modo duos Ducatos non excedat. 528. — Ex his omnibus concludo, quid probabilius mihi videatur. And indeed 4.

Regarding the mendicants, I believe that one pound of lead would suffice as a heavy matter for one Julian or Carolus, and less so if anyone should earn alms less frequently. Regarding ditches and similar works, generally speaking, two Julii; but for artisans, two and a half Julii. Regarding common matters, or rather moderately splendid ones, four Julies are deemed sufficient in general; and fewer for those who live miserably from their own means, but five or six Julies for those absolutely rich: and I consider the same to be true for very opulent merchants. Regarding the very richest magnates, one Golden.

And I think the same for a very opulent community; at least I say that it suffices for a serious matter with a Golden diminution. With regard to kings, two Golden ones. Chapter 1. Dubium secundum.

On theft. • 3. A greater requirement is made for a notable quantity in things which come forth of their own accord and are very exposed, such as

fruit by the roadside. See » 529. — Question NoneI. If those cutting wood in a forest prohibited do sin by so doing, and are bound to restitution (1)? It is certain that it is licit for any community to prohibit others under the threat of punishment for their own good, lest they be dissipated, as commonly taught by Molina t. 4 tr. 2 d. 58.

Soto l. 4. de just. q. 6. art. 4. 6. n. 85. et l. 4. c. 5. dub. 4. n. 4. cum aliis. They, however, intend this to be understood: Provided that from elsewhere the inhabitants can conveniently carry away wood, as Molina teaches in the aforementioned place and Soto also does, namely, that if a forest belongs to the entire community, those who cut down wood against the prohibition do not sin seriously (nor even venially, according to Soto). Angles, Corduba, etc.), and they are under no obligation to restore anything unless they have caused a great devastation; but they are only bound to the penalty after the sentence; for such prohibition is considered purely penal according to what is said in book 4, n. 445. Thus Molina ibid., and Soto, say.

But the doubt, no. 48, verse 2. Who in place, and with Arag. For which reason the slaughter is said to be great, Soto says in loco citato and with Salon. Lop. et Man. that the weightiness of the matter itself should not be considered, but rather in respect to the harm it inflicts upon the community: hence he says, do not bear a burden lessening one's single day's work for personal use, nor two burdens every week for selling; for the rich (he says) takes [it] for personal use, while the poor takes [it] for selling that he may live thereby.

They also say the same, Soto loc. cit. and Molina. Conclusion 4. and him and others, if there be two nearby towns, and the inhabitants thereof are accustomed to cut wood from the forest of another. Which is also expressly approved by 4. q. 3. p. 7. n. 26. with Valent. Reboll.

Seyr. (contra La Crosa n. 254. qui perpape citat pro se Bonac.) Adduntque Lugo num. 91. et Dicast. Burg. et Hilsung. apud Croixl. c. nec teneri ad restitutionem, nec graviter peccare, sed tantùm teneri ad pœnam qui scindit ligna ex nemore propinquo communitatis, etiamsi nulla sit inter illa oppida communicatio, quia tales communitates videntur esse contentæ pœnis, quas à cædentibus exigunt: quod sic præsumendum ait Bonac. num. 27. cum Vasq. Molin. Vili.

Reg. Turrian and others: if the community wronged remains silent, it neither cares for nor attends to the restoration. But what if a forest belongs to some private individual, or another, and has been distinguished by the

law as a private wood and a public one; variously stripped of many trees in quantity and number for fraudulent purposes, holding back much valuable timber, besides always providing room for restitution where there is no near fortification? Agrees with others, it is sufficiently probable that those falling down are restrained only for punishment.

Because (as it is said), when the republic transfers a forest to a community or an individual, it does not give more right than it itself possesses; but when the forest was part of the republic, falling trees were held liable only to punishment; therefore similarly, if the forest has been transferred. But more correctly they contradict Soto, Art. 4, v. Doubt, Bonac. with the aforementioned authorities cited in note 27 and others many among them say. Reason, because the Lord has strict right over that forest, so that He may freely sell it or rent out the division of the trees.

Hence rightly do they say Croix n. 253. with others, that if the community sells or leases the forest to some private individual, you are bound to restore any damage whatsoever, even though you be a part of that community; because then the community, and consequently each citizen thereof, from whose mandate or consent the administrators sell or lease, transfers all its right unto him. What has been said concerning woods with regard to the felling of trees is also said concerning fields with regard to pasturing animals, as Lugo says n. 93 and others. Question NoneII.

Is it licit to eat grapes in someone else's vineyard? They affirm Co- varr. 16. num. 33. that in a manner one may not carry out grapes from there and bring those things v. 24 and 25 where it is said: Having entered into the vineyard of your neighbor, eat grapes as much as you please; but do not carry them away with you outside. Si intraveris in segetem amici tui, franges spicas, et manu conteres: falce autem non metes. And that which is said concerning the grapes and ears of corn, Abulensis says according to Hebrew Josephus, and many others according to Calmet in the cited place, say it ought to be understood not only of inhabitants, but also of all travelers, for whom this permission is granted to refresh their strength.

But P. Holzrn. from the 7th precedent n. 758 (to whom Lugo adheres in the cited place) understands it according to Lyrano in the aforementioned dictionary. Deuteronomy teaches that this concession was granted solely to the Hebrews by special permission of God, or only to those wine-makers who labor in the vineyard. And to this last interpretation favoring is the Chaldean version, and the Arabic one according to Calmet, as well as the Hebrew one, which reads those words: 'neither go forth with thee without,' but do not place in thy oven, that is, in thy leavened bread oven, as Calmet explains. Moreover, Lugo probably says that according to the law of nature

it is permissible to eat one or two bunches of grapes (that is, one or two grapes); in like manner he grants permission, so that one or two fruits may be eaten from someone else's orchard: for to prohibit this seems excessively harsh and contrary to humanity.

And it seems to approach this second opinion Hugo the Cardinal, who explains the aforementioned text thus: This is not sought today according to the letter, but rather has been dispensed against it on account of human malice. His tamen non obstantibus satis probabilis videtur prima sententia: nam quod promissio illa fuerit pro solis Hebræis nullo valido videtur nitere fundamento. That it was for the sole benefit of wine drinkers, this is opposed by the authority of others, as stated above, and especially by that of Josephus the Hebrew, who holds greater weight on this matter, since he himself has a better understanding of the customs of the Hebrews than others. Obstructed are the words of the text, the entry into the vineyard of your neighbor, which is more properly understood of travelers, rather than of those who labor in the vineyard.

It is obstructed by the fact that Luke, in chapter 6, verse 4 of the Acts of the Apostles, states that according to this law, when they passed through the fields, they wished... to gather ears of corn and eat them, rubbing them with their hands. But they were rebuked by the Pharisees, not because they did this illicitly, but because they did it on the Sabbath day; yet Christ the Lord entirely excused them. 350. — « 4. Moreover, if anyone, either from various sources or from one source, inserts little by little and in many places, he will be robbed both of small and of great things. See 46.

They teach . . . 2. §. 2. n. 49. in furtibus minutis requiritur ad materiam gravem duplo majorem; nam si materia gravis sit per se, v.g., quatuor Julii, per furta minuta ad materiam gravem requiruntur octo Julii. The same quantity is required by P. Holzrn. de 7. praec. n. 745., if these thefts are diverse; and if they are committed at notable intervals, then triple (is required). It seems more equitable to me, as others say according to . . precedent. Conf. 44. n. 325. quod si furtula fiunt eidem per intervalla, aut diversis eodem tempore, requiritur et sufficit ad materiam gravem simpli cum dimidiamento, v. gr. sex Julii.

If however both occur together, namely if they are committed by different persons and discontinuously, I consider that a much greater requirement is necessary, to wit, eight. This however is understood with reference to 46. n. 54., namely that thefts should not be committed by parts through industry, and moreover a great interval should not be interposed between robberies. They add moreover in the same place, that petty thefts do not

coalesce, if they are committed by many individuals, and a great interval intervenes, for instance, in the course of a year. But it is excused from restitution under a grave pretext, even though the theft may be taken by one person, if an interval of a year intervenes.

They, however, reject the opinion of Vidal, loc. cit., who excuses it if there is an interval of 45 days or a month, as Nisi admits, and excipits. Hence more readily do I smile, because he feels it, namely, at least that an interpolation of two months be required, while we speak of matter which, although not grave in itself, is nevertheless proximate to grave matter. 534. — It is not mortal, speaking per se, to steal any amount with the intention of restoring it immediately, for instance within a quarter. Croix lib. 3. p. 4. n. 4402. cum Idem est, si intra illud breve tempus quis velit restituere tantùm illam ultimam partem complentem materiam gravem, aut si ad breve tempus restitutionem 316 Lib. 4. Treatise 5.

Of the seventh precept of the Decalogue. Let it be distinguished. Cross with B. against Vasquez. Rule. Seyr. et alii pluris. mis. 532. — Here it is asked whether it is a mortal sin to rob a small amount of sacred relics? There is no doubt that within the district of Rome it is mortal to steal even minimal relics, since Clement VIII and Paul V imposed excommunication upon those who, against the wishes of the rulers of the churches, steal even the smallest relics.

Secondarily, Croix says probably in book 3, page 4, note 4003, that if something minimal is stolen outside the district, and the relic itself does not appear deformed nor diminished in its estimation; unless it be some notable or rare relic, such as that of the Holy Cross, or the Locks of the Blessed. Mary V. etc. DOUBT III. When one seriously sins by committing many trifling thefts? 538 What if someone is stolen from and does not have the heart to love? What if he has it? Is a petty theft made up of various components coalescing together?

And then can restitution be made to the poor? What if many have been defrauded of small amounts, one unaware of another? What if they all know and are defrauded at the same time? What if each is moved by the example of the other? Is it a mortal sin to be defrauded of something lawful after the completion of the matter and the grace? RESP. This too is the measure of the quantity of injury or damage done to the neighbor, and intended by the thief, which is also the measure of the quantity of sin. See lib. 7. cap. 24.

Whereupon it is resolved: 533. — “4.” If anyone merely through

opportunity steals, whether once or many times a little at a time, without intending to acquire anything notable nor seriously to harm his neighbor with each theft, he does not sin gravely; neither do these taken together constitute one mortal sin; yet after reaching a notable quantity, by retaining it he can commit a mortal sin. Even though he never advertes to a grave culpability, as is seen in n. 553, nevertheless this will be mortal if either then he cannot restore it, or if he has any mind even for a moment after receiving it to restore what he has received then. t. 6. r. 25. » 2.

If, however, by means of many small thefts, either one at a time or several, he has an intention gradually to enrich himself, or to cause serious damage, he commits grave sin through such intention; and although the execution of each individually is only venial in itself, yet as there persists such an intention, it constitutes a continuous execution of mortal sin. 2. c. 42. d. 7. c. quia nocent graviter reipublicae et praxis illa valde perniciosa est societati humanæ, for example, if a tailor steals a small piece of cloth from various sources; if merchants use shorter cubits, etc. (Note however this proposition 38. condemned by Innoc.) XI. One is not bound to make reparation by restoring what has been taken away through a few (other) small thefts, no matter how great the total sum may be. Meanwhile these are excused from a serious sin. 4. From what was said in the first case. 2.

If they do this so as to keep themselves indemnified, or because otherwise they would not gain profit, or because they should increase the price and then would not find buyers. Rosella, v. Purchase. 3.

If they do not have otherwise, from where they or theirs take. » 534.— Here is what is sought. I. A theft, committed by different persons, may aggregate and give rise to a grave obligation for restitution?

They deny the Ang. Med. et P. Navar. apud 7. cap. 42. n. 40. et probabile putat Croix l. 3. p. 4. n. 4013. cum Esp. nisi fur magnam quantitatem auferre intendisset; vel nisi domini læsi unam communitatem constituerent. But justly does Lugo in Decretals, d. 16, n. 48, reject this opinion from all, since it is contrary to the common and tenable position even with Lugo himself, and point. 2, § 2, n. 49. Croix ibidem et aliis.

And it seems more truly when its opposite is expressly condemned, since the aforementioned proposition was speaking in general terms. The reason will be made clear from the following question, which among no Author I have found discussed. Question NoneII.

If thefts, which simultaneously involve a large quantity and are committed

by different masters to certain [individuals], should be considered as such, is the thief held culpable of a grave fault for failing to restore it, or does he satisfy his debt by distributing those items to the poor? It seems that on one side, restitution should be made under a grave obligation to the lords, unless the danger of losing reputation is excused, or a most serious damage or inconvenience is incurred. Reason, because although the masters are not grievously injured, yet the thief certainly cannot retain for himself a great quantity taken away; for (as it is said in VII. c. 42, n. 45, and some others among Lugo d. 46, n. 40, even though for another purpose) the precept of not stealing does not merely prohibit that one might grievously injure others, but also that one might notably enrich oneself from alien money. Therefore, since a thief is certainly bound to restore, it does not seem sufficient if he restores to the poor; because such restoration should be made only when creditors are in doubt; not however when they are certain: hence, by restoring to the poor, although the restoration can be made without great inconvenience to the masters themselves, it seems that the thief is not restoring to those to whom the thing was taken away, but to others to whom no right pertains; and thus he does not seem to fulfill his obligation.

But it seems more probable to me and to other learned juniors that such a thief would not commit a grave sin if he does not restore to the masters what he can conveniently return when he satisfactorily fulfills his heavy obligation by distributing to the poor what is due. Reason, because, as Lugutius teaches in loco citato n. 5 and consents in chapter cum Vasq. Val. P. . the precept against stealing did not so much intend to avoid one's own profit as to avoid harm to the neighbor.

Si igitur singuli domini non fuerint graviter laesi, fur non tenetur sub gravi obligatione eis restitutionem facere. However, since he himself, notably enriching himself by means of alien goods, has inflicted a grave damage on the commonwealth, therefore he owes restitution for the harm to the commonwealth. Therefore in that case he will be held under grave obligation to restore the damage to the commonwealth; but only to the lord under a light obligation. Whereupon it seems that the thief will sufficiently satisfy his grave obligation by presumed consent if he restores to the poor, or to pious places, who are poorer parts of the republic.

But you will say: Never is it presumed that a thief wishes or desires to restore to the poor, when from his own grave inconvenience he could without any difficulty fulfill the debt due to the lord. I respond: since in this case it is not considered a grave deprivation against one's will (as we said, then primarily pertains to the right of the thing taken if it is restored to the poor); hence it seems probable that the thief would always be

excused from mortal sin if he restores to the poor; and even from venial sin if a reasonable cause is present. "If several small thefts are committed simultaneously or successively by one person against another, although taken together they cause grave harm; then if neither party knows of it, no one commits a grave sin: for example, if travelers take either one grape or another from a vineyard and eat them, even though they may claim that this is permissible." Val. et Ripa; » (See dict. num. 529.) « contra t. 6. r. 30. Si autem singuli conspirent, singuli graviter peccant.

If finally they mutually know it of themselves, yet still no one is the cause of theft for another, it is more probable that it is not mortal sin, as c. 536 teaches. — This opinion is most probable, as cap. 7, § 5, qu. 6 states. Lugo, in the sixteenth section, third number, fifty-fifth point, third section, note twenty-eight, with fifty-two, on justice, with Soto and seven chapters twenty-one, note twenty-four (contrary to Lugo). The reason is because then no one is the cause of damage, which happens by chance to the lord from others. 537. — If, however, many will be moved by the example of another, so that each is stirred as it were by a small part, even without common counsel, all say they sin against justice. But it is more probable that they hold according to ibid., that one sins solely against charity (and gravely if the matter be grave) on account of scandal, not however against justice: because an example is not a positive cause influencing harm to another, as we said in lib. 3, n. 45, commonly with . Mol. etc. 538. — Si quis post completam materiam gravem furatur adhuc aliquid aliud leve, Lugo d. 16. n. 43. et Croix l. c. n. 4007. cum Sed Lessius cap. 42. n. 44. et n. 23. cum Tapia, et Diana, hujusmodi furtum leve dicunt non constituere peccatum mortale nisi pertingat ad aliam novam quantitatem gravem; et hoc valdè probabile putat meritò 2. g. 8. p. 2. n. 5. Quid sentiendum de furtis domestiorum, vel amicorum? 539.

What concerning the theft of wives and husbands? A wife may give alms, etc. 541. Can she at some time expend? Whether it is licit for oneself to bribe parents, etc. 543.

What kind of theft by children is serious? 544. May a son be able to steal goods from his father the merchant for his own work? What concerning the thefts of servants in terms of equity, etc.? 546. On restitution, to be made by the wife and the son. 539. — “R esp.

It is permissible that a theft be considered true, even if the wife, children, friends, or servants of the head of the family take something against his will; yet generally a greater quantity is required for it to be mortal sin, since this lord is usually either not reasonably unwilling, or at least less unwilling, so that what is taken from him is more often than not taken

with less regard for reason and more for the pretext of receiving, such as for playing, drinking, etc. See Cajetan. » v. Theft. n. 76. ### Whereupon it resolves: » 4. The wife gravely sins if she receives a notable sum, against her husband's will, even from the dotal goods or common goods; because although one-half thereof pertains to her, nevertheless the husband has the use and profit of that part, and therefore is bound to restitution. . 7. cap. 6. d. 8. n. 7. etc. » 2.

Similarly gravely sins the husband against justice when, under an obligation to restore, he appropriates something notable from his wife without her consent, from his own paraphernalia or other personal goods, if indeed the free administration of them competes with the wife herself, because it is fitting both for the husband and for the wife insofar as they have their own goods. See d. 43. 6. c. 4. d. 9. 540. — 3. A wife can give alms and gifts according to the custom of other women of that place and condition; even if her husband prohibits all alms to be given by her, because custom grants this right to her, by which her husband cannot deprive her.

» (Thus Lugo, d. 46, n. 64, commonly with Molina, etc., ap. Diana tome 1, part 2, treatise 1, question 33. And this, even if the wife has her own goods, as Lugo and Bonacino, c. n. 1025.) t. 3. r. 22. et p. 5. t. 8. r. 34., where he teaches with Molina and ten others, that it is possible for her, without the knowledge of the husband, to give a twentieth part of the annual income or profit: so far as this pertains to the decorum of status, and the husband irrationally be unwilling. » (But this is so universally stated they reproach, Lugo, d. 15, n. 16.)

Sporer, and c. n. 1021. The same, however, admits only in the eighth book, fourth treatise, second chapter, section three, number fourteen, when riches do not greatly exceed. Hence also it can be said that with moderate alms Abigail sought to obtain her husband’s conversion or lest God punish him, and others contra t. 46. r. 23. et p. 5. t. 8. r. 34. 541. — « 4. A wife can expend goods, even when her husband is absent or foolish: because then it regards her the administration of the house; likewise, what she acquires by her industry (save however the labor which she ought to render to the family, as Croix notes ibid. n. 4018); likewise also paraphernalia, that is goods which she reserved for herself besides the dowry brought by the husband. » (Item potest uxor liberè disponere de iis, quæ sibi reservavit de bonis à viro sibi assignatis pro vestitu, aut sustentatione familiae ad certum tempus, modò honestè familiam jam sustentàrit.

Thus Croix l. 3. p. 1. n. 1024. cum. "5. The wife does not sin by taking

away some [things], for compensation, if her husband is prodigal: because then he does an injury to his wife, plunging a part of what belongs to himself into ruin, or for food, clothes, and other necessities for himself or the family, which the husband often fails to understand and would vainly seek from her. Bon. c. 542. — « 6. » If the husband's father, mother, or children from another marriage are poor to such a degree that they live miserably according to their circumstances, and the husband is unwilling to assist them, the wife can provide for them out of her own goods, or even out of common goods (provided that after the death of the husband all things be reckoned in his part), because she is bound by natural law to support them, and the husband must consent to this.

Navar. Palaces, 2. c. 42. d. 14. t. 8. r. 34. where that power is extended to brothers and sisters, which also c. et 6. c. 4. d. 9. judge probable. >(When Lugo says in d. 16. n. 71. Mol. .) 543. — « 7.

The son sins gravely, receiving a notable sum against his will from parents, which is not always the case, according to whether the father is less unwilling, and the son is somewhat like the father. Wherefore he will not be bound to restoration, unless perhaps it seriously harms the heirs. » Chapter 1. Dub. 4.

On theft. Salaques, citatus apud Croix, librum 3., paginam 4., numerum 4022., non habet gravitatem furto filii viginti et triginta aureorum a patre possidenti annuos quadraginta cinquecentos aureos, et non condemnat Lugo, dies 16., numero 76., si pater non sit tenax, et filius adolescens accipiat ad usus honestos. Et de septimo praecepto capitulum 5., nomen 57., dicunt: non peccare graviter filium furantem duos vel tres aureos a divito patre. Bannez dicit ad furtum gravem filii parentis praedivitis requiri saltem 50 Aureos: sed hoc Lugo et La Croix ll. cc. rejiciunt; nisi forte esset filius principis, in quo consentit 755. qui etiam dixit, non esse grave accipere a parente praedivite decem Aureos. They admit moreover, ibid., that if the father sends a hundred gold coins to his son who is engaged in studies, the son may take five gold coins for honest recreations on the presumed consent of the father. « 8.

If a notable sum borrowed by the son is expended on vile or frivolous things against the will of the parents, from money provided to him for honest uses, he thinks that he commits a mortal sin: even though it may be excused by restitution, if it is thought that the father, being asked, would readily forgive. If a son, for example, as a merchant or shopkeeper, administers goods belonging to his father, he can demand from the father a salary, which he would have to give to a stranger; and if he cannot obtain this or dare not demand it, he can quietly receive it. Thus probably.

3. s. 6. t. 4. cap. 8. . 4. tom. 4. r. 66. Thus likewise they perceive among Moyà, tractatus 6, dispertitio 4, quaestio 4. Ang.

Whereby it seems that the son can compensate himself in this manner for the reward, just as the cleric could compensate himself for the fruits of the benefice which he ignorantly exacts from paternal goods for sustenance, unless he expressly renounces compensation, because in doubt no one is presumed to wish to deprive himself of his own right, as Leander says there. But Lugo, d. 5, n. 42, and Moya with Molina say otherwise. Med. Sylvestri et alii opinantur, nullo modo filium posse hoc salarium a patre exigere, quia secundum iura filius debet patri suas operas et industrias; et quidquid ex bonis paternis acquirit, patri acquirit, ut probat 1. c. 2. d. 8. et 9. And although this judgment is very probable, it is more so according to Croix, l. 3, p. 4, n. 1054; hence, if the father were to deny the salary, or if he should blush for his son to ask for it, Croix says in ibid., n. 1035, that the son could hardly secretly compensate himself for it, since compensation is not lawful unless there is a certain right: but here the right of the son is very doubtful.

You will say: The first opinion is at least practically probable. By a probability of law, or proximate one, as the Doctors say in the case of someone who can compensate for his own lost reputation with money, or by not restoring the reputation to the detractor (See what is said in lib. 1, n. 35, in the note). But it is replied there that it is supposed that the diffamated person has a certain right to his own reputation, and only doubt exists regarding the manner. But there is great doubt whether the son has a right to compensate himself in the case proposed. When however the right or credit is not certain, all agree in saying that it is not permissible to compensate: See point 9, §3, n. 148. If however the son renders greater services and obedience to the father than he is bound to do, in that case can he demand recompense from the father?

See what is said at no. 488. v. III. 545. — 40. Although servants who export or sell provisions such as those used for food and drink in the household gravely sin; yet they are more easily excused (even if they be religious) when they consume them at home; since in these matters the lord, or prelate is often only unwillingly constrained so far as the clamor of necessity goes, not so far as regards the matter itself. Which yet might be feared if they were received extraordinarily. And 2. c. 42. d. 8. Wherein he teaches that the thefts of smallest servants from comestibles which are not usually kept in a locked place do not coalesce, unless they be taken with the intent solely to eat, and not to sell.

(Ita etiam Caj. apud Croix l. 3. p. 1. n. 1016. But this is not admitted

rightly: Chapter 5, Title 5, Number 58, if the quantity were great.) 546. — « 41. When a domestic theft is committed by a grave sin, it cannot be excused; then the wife is bound to restore from the paraphernalia, the son from the castrensibes, or quasi from them, or if she does not have such things, after the father's death to bring in division of the inheritance whatever quantity has been taken away being very great, and neither tacitly nor expressly did the father dismiss restitution. But if they cannot restore the ox without great difficulty, they are commanded to compensate with extraordinary services and obsequies as much as possible. . 3. t. 3. p. 1. c. 4.

HEAD II. ## OF RESTITUTION. ## DOUBT I. ## What is restitution, and who are bound to it? 517 What is restitution, and whether justice commutativa requires only what has been damaged? 518 From what roots does restitution arise? 519 What is the theological guilt, and what the legal guilt? 520 From what guilt arises the obligation of restitution? 521 What if one slightly harms another with a grave intention to do harm? 522 Does venial guilt induce an obligation of restitution? sss Can a great obligation of restitution arise from a slight theft sometimes? ss4 Is theological guilt required for restitution in contracts? ss5 Is the same in offices? ss6 What about material and formal injury? 547. — “Resp. 4. Restitutio est actus justitiæ ad salutem necessarius necessitate præcepti, quo reparatur damnum proximo illatum per injuriam; ita ut radix restitutionis non sit quævis læsio proximi, v.g., contra charitatem, etc. in quibus non habet jus, quod violetur; sed ea tantùm, quæ est contra justitiam, in qua propriè injuria infertur, hoc est, læditur aliquod jus proximi, quod is habet in re, vel ad rem, in qua damnum patitur. That which can be done in various ways, for example, by stealing, defrauding, destroying another's thing, negligently guarding, killing, maiming, detracting honor, corrupting, and similar actions. Let us now take up these two treatises on restitution and contracts for discussion, which, since they involve many intricate questions and doubts, and provide solutions to the most difficult problems, deserve the greatest attention and a judgment so necessary for practice that, if those who confess in these matters are not well versed therein, they should incur many rebukes.

It is likely to happen in this my book, and especially in this last edition, that none of my senses will be satisfied: for from those who more readily love either rigid or benign judgments than is proper, I shall perhaps be regarded as too austere, because I have departed from the severe opinions of many and weighty authors; or else as too indulgent, because I have approved as probable several opinions favoring liberty, having been numerous. I invoke God, whose honor and salvation I have proposed to myself, that whatever I may have written herein has not been induced in

me by passion, or by adherence to the words of certain authors, either through excessive austerity or excessive benignity. In every question, having previously studied with prolonged diligence, I have indeed taken care to investigate the truth, especially in those matters which more closely pertain to practice; and therefore not only have I diligently examined the reasons which the classical doctors transmit, but also I have not neglected to consult many learned men of recent times, so much so that sometimes I have consumed many days in making a correct judgment concerning some question. I did not follow the paths of writers blindly (as if I were a sheep, using the harsh words of the strict ones), but I gave care that I might attain the truth, or embrace judgments which more closely approach the truth.

With all my strength I have endeavored to place reason above authority; and where reason has conquered me, I have not hesitated to oppose many authorities, even those to which I might more readily have adhered, since, when I was acquiring this science, they came into my hands before others did. Hence, benevolent reader, lest you think me entirely devoted to authors of benign sentiments, if you observe that I often cite them; for in order to complete this work, I did not neglect to read even authors of rigid sentiments, and especially Merbesius Contensonius, Habert, Natalis Alexander, Jueninum, Cabassutium, Cont. Tournely, Genettum, Petrocorensem, P. Concina m., etc., although prepared to dissent from my sentiments, nevertheless did so only when their reasons convinced them of the truth. But how could they convince me while I was watching; for they themselves are most likely more inclined to be convinced by censures and condemnations than by the force of rational arguments to promote their own sentiments?

How could I have adhered to all those who frequently proclaim their opinions as more true and conformable to the Gospel, unless because they are stricter, and often insult those opposed to them, as if they were false and contrary to the Gospel, unless because they favor liberty? However, in matters to be discussed dubiously, an equal scruple weighed with me whether to admit as probable those sentences which favor liberty and are alien to reason, or rather to condemn as improbable those which seemed to have grounded themselves on some valid foundation: since it is certain, or should be held as certain, according to the common teaching of the Doctors, and even the learned Father Concina, who is a celebrated advocate of rigid opinions, in his most erudite work, Dogmatico-Moralis Theologia, instructs me that burdensome penalties are not to be imposed on men except by evident reason: for it is equally an abomination to excuse one who is guilty as it is to judge innocent one as if he were a criminal, as diligently warned St. Titus 1, chapter 41, section 28, where

speaking of when something should be condemned as mortal sin or not, he wrote thus: Unless there is express authority from Sacred Scripture, or the canons and determinations of the Church, or evident reason, it is not determined except with very great danger. Nam si determinetur, quod sit ibi mortale, et non sit, mortaliter peccabit contrafaciens, quia omne, quod est contra conscientiam, edificat ad gehennam. If however it is determined that it is not mortal, and according to the truth of the matter is not so, his error will not accuse him mortally..... for when he erred from gross ignorance: otherwise, if from probable opinion; because he consulted those skilled in such matters, to whom he was told that it is not thus mortal: then it seems that his ignorance is quasi invincible, which accuses totally.

And this concerning those things which are not expressly contrary to the law of reason, or natural law, or to the articles of faith, the Ten Commandments, and such like, in which the ignorant will be deemed ignorant. Item S. Bonaventura dixit: 'Cavenda est conscientia nimis larga et nimis stricta, nam prima generat presumptionem, secunda desperationem: prima saepè salvat damnandum, secunda contrà damnat salvandum.' Because of this, fear has always been with me lest God might justly demand a reason from me, "whether you had approved lax opinions as probable, or whether you had condemned probable opinions as lax." Considering the present fragility of human nature, it is not always true that it is safer to direct souls by a stricter path, when we see that the Church has often prescribed both too much liberty and too great rigour.

Wherefore Gerson, in his work De vita spiritualem, part 3, lecture 4, collection 40, observing the harms of overly rigid judgments, thus remarked: It happens that through such public assertions of excessive harshness and strictness, especially in matters not most certain, men are not extricated from the mire of sin, but rather plunged deeper into it, because more despairingly. And this is all the more urgent in matters of restitution, where in doubt the possessor of the good has a certain right to the thing possessed, and he should not be deprived of it, unless morally it is established that the thing belongs to another, according to the common rule, even according to the strict sentences of the Fathers, as Lugo testifies in Decretum d. 17. n. 86. And thus truly Gonet holds in his Dissertatio de probabilitate. Habert t. 4. Natal. . 4. r. 39.

Wigandt exo.1. qu. 7. P. Henno, etc., see the aforementioned in book 4, note 35. Commonly indeed they say, at least in matters of justice, that in doubtful cases the condition of the possessor is preferable according to that rule, namely, that in doubt the possessor's condition should prevail. Finally, I protest regarding the remainder, in that if I have erred in any way, I wish for my error to be shown to me; for I am prepared promptly to

retract therefrom, and I shall not blush as much as I did not blush for doing so in this my new edition, in which I have withdrawn from several opinions which formerly seemed probable to me but which subsequently appeared to me either excessively lenient or excessively rigid.

Therefore restitution is an act of justice, but it is an addition of commutative justice; for restitution is not due from injury to legal justice, which regards laws and penalties; nor from injury to distributive justice, which regards the merits of persons. Wherefore, the Bishop, conferring a simple benefice upon an unworthy person, is under no obligation to restore something worthy, so that it may be said with probability, n. 585 in lib. 5 and n. 407. What, however, if the benefit be a remedy? See the same place, no. 409.

Therefore, obligation to restore arises solely from the injury to commutative justice, which regards the right to things. However, from an injury to any other virtue no obligation arises to restore, as Croix in l. 3, part. 2, num. 295, with Soto, Lugo, Bann. ct Cov. Wherefore the aforementioned Doctors say that if an action proceeds from another virtue than justice, namely, from justice, what is received for its observance should not be restored, since it is due. It must be noted, first, that two roots of restitution are commonly assigned; the first arises from the unjust reception, to which is added the root arising from unjust damnification. Second from the reception of the thing, or from an unjust retention, to which is annexed the obligation of restitution by contract. 549. — Notandum II. quòd alia est culpa theologica, quæ respicit conscientiam, et est eadem ac peccatum mortale, aut veniale.

Another kind of fault, which is divided into gross, namely when negligence is omitted, which commonly all are accustomed to observe; and slight, if negligence is omitted, which all careful ones observe: and most slight, if negligence is omitted, which even the most diligent posit (1). Hence it is resolved that he who minimally foresees damage neither intends nor is certainly held to nothing, although he may bestow care on the illicit thing, as a thief who fortuitously sets fire to an alien house. Thus, point 2. section 4. note 14 and others. 550. — With these premises, inquire. I. From what kind of fault arises a grave obligation of restitution in crimes?

It is replied that such an obligation arises only from a broad fault, joined with grave theological fault. Thus. 2. q. 7. d. 6. n. 27. Lugo discusses on the eighth day, section five, number fifty-six. Soto l. 4. q. 7. art. 2. in fin. 2. de restit. cap. 4. num. 48. 2. c. 23. n. 460. 4. art. 4. n. 2. § 2. n. 16. cum 2. p. 2. n. 184 et 185.

Item Cabassut. Theor. 6. c. 47. n. 2. q. 4. et alii communiter. Reason, because (as Lugo teaches in d. 8, n. 59, and others commonly say), restoration is generally understood as a punishment; and hence we say that, so that due equality may be maintained, there requires to be a grave theological obligation of restoring something of great value; theological, because, when conscience is burdened with an obligation, it must have been present in conscience a sin: grave, because, so that conscience may be held to a grave obligation, the fault must itself be grave. 551. — Here is questioned II. If anyone commits a light or very light culpable offense against justice, but with a serious intent to harm, is he bound to make reparation for the damage that has ensued therefrom?

Lugo affirms in d. 8, sect. 6, n. 75, and in c. 4, l. 4, d. 5, n. 9 he denies with Angles, Navarreans, and Turrecrematae: although this triple distinction of culpable actions is not treated the same way in the new law, greater care is nevertheless required in certain cases than in others; for example, it is expressly stated that greater diligence must be employed in a deposit if the bailee has received remuneration. What, however, can be principally and generally brought forward from Gallic law concerning culpable omission or lack of required diligence toward a medium, is this: Article 1187. Sive contractus cedat in nitilitatem unius solum partis, sive in utilitatem utriusque, conservationi rei invigilare debet ut bonus paterfamilias. Article 1881.

Who through his own act is the cause of another's damage, this must be made right. Art. 1888. He is likewise bound to make reparation for the damage caused by his own negligence or imprudence. Art. 1884.

Nay, he is bound to make amends for the damage who has caused it through others whose actions are deemed insufficient; the father and the mother, living together with a minor, are held responsible for the damage caused by a servant; the master and the one in charge of affairs, to which they have committed servants, are liable for the damage incurred by such servants in their business matters; the instructor and the craftsman are answerable for the damage suffered by the pupil or disciple under his care, unless it can be proven that all these could not prevent the damage. Art. 1885. The master or user of quadrupeds is held responsible for the damage caused by that which they drew, whether the animal exists under his custody or has escaped from it. Art. 1886.

The master is held responsible for the damage caused by the collapse of his own property, if it has occurred on account of defective maintenance or

defect in construction. Edit. among the notes number 24. Reason, because for the obligation of restitution mere evil affections are insufficient, but an external act completely unjust is also required. But in this doubt it seems to me that the true sentiment of Lessius 1:2:7: n. 25 is entirely correct, who resolves the case by another way and thus distinguishes: if he prudently doubting omits that diligence which he was bound to exercise, in inquiring whether damage has befallen his neighbor through his own action, then indeed he sins gravely against justice and is held to restitution.

Thus, if he employ all due diligence, because then he commits no culpability against justice, and therefore is held to no restitution, although elsewhere he may sin against charity through an evil mind. 552. — It is asked ILL. Whether a venial sin against justice introduces an obligation to make restitution? Resp. Si est veniale a ratione parvitatis materiae, certo obligat ad restitutionem sub levi. If however it is venial on account of inadvertence or lack of deliberation, this is asked: does it oblige to restitution?

The first opinion affirms this, but its authors differ according to Lugo in Decretum, just. d. 8, n. 56.; for some, such as Vaquez and Turrenne, say that then there is an obligation to restore the entire damage, yet they do not explain whether it is under grave culpa or levi. Others, as in the third part, first chapter, sixth section, fifth note. Mol. tom. 3. tr. 2. d. 698. n. 7. Cross 1. 3. part. 2. n. 194. with Suárez and Bona.

Reginald and others say that there is an obligation to restore for the sake of reason of guilt: hence Bonac. d. 4., q. 1., punct. 3., says that a guilt can be so slight as not to obligate one except to the hundredth part of the damage. If however it be graver, it can obligate up to a tenth part; in the case however, where there is doubt whether the fault was venial or mortal, the damager is to be obligated up to half the damage, according to Bonac. The second opinion, however, is more probable and better remembered, which the Petrs hold. Nacarr. 1. 2. c. 4. n. 4. . 2. c. 7. n. 27. 2. c. 25. n. 160.

Lugo says. d. 8. n. 57. who entirely consider it more true with Herr. Sa, Vita de restituendo, quidam art. 4., n. 3., cum Azor et Fillius apud Cabassum. Theor. 6. c. 17. n. 2. docet, in hoc casu nullam obligationem restituendi esse. Reason, because venial fault from indeliberation is not simply a crime and an injury; hence it cannot give rise to an obligation of restitution: just as in a contract where there was no fully deliberate consent, no obligation arises; and similarly, a vow made without full deliberation does not obligate; therefore, neither should a decision not

perfectly deliberated be the cause of a perfect obligation (See what is said 1. 2. num. 3.). I have spoken of an obligation neither under grave nor under light matter.

Not under a grave obligation, because a grave obligation does not have proportion with that light fault; nor under a light obligation, because a light obligation does not have proportion with a serious matter, as most learned Lugo argues most excellently in numbers 58 and 60 after B. Thomas cannot easily be called the foremost among other theologians rashly; for in disputes concerning doubts, this author often places the scythe so deeply at the root, that the reasons which he himself brings forward are difficult to solve. 553. — Question NoneIV. Whether from a light sin, on account of the littleness of the matter, contrary to justice, it can sometimes happen accidentally that a grave obligation arises for reparation?

Affirmatively, and the case is when in the last theft, having completed a serious matter, the thief does not notice the past thefts; for then he is bound by grave obligation at least to restitution with regard to that last theft. Thus Lugo d. 8. n. 62. q. 2. n. 5. cum Card. 3. part. 2. n. 245. (contra . And the reason is that a heavier obligation does not arise from that last unjust acquisition, which, since it is merely a light fault, could not produce a heavy obligation; but it arises from an unjust retention of weighty material that has been culpably acquired: or, as Croix says in loco citato, it arises from the gravity of the debt due on account of those formalistically unjust abstractions. It suffices, however, to avoid a mortal sin, that only that small matter be restored which was taken away, the serious matter being fully compensated, so as to hold more probablistically . etc. 554. — Question None

V. Sufficit autem ad vitandum peccatum mortale, ut restituatur tantùm materia illa parva, gravem materiam complens, ut probabilius tenent. Is it also required in contracts that there be a theological fault for the obligation of restitution? It is certain, as Lugo says in Just. d. 8, n. 101., both laws and those who contract can properly obligate themselves to restitution without any theological fault; but it is doubtful whether they are actually obligated to do so. It is affirmed in the third part, third question, fifth chapter, note 2 with note 99, that in contracts one is bound to restitution solely on account of a legal fault, and indeed a very slight one, if the contract involves a benefit for the committer of the fault; gross, if it involves a benefit for another contrahent; slight, if it involves a benefit for both.

The reason for this is because equality demands that where there is greater

advantage, greater diligence be applied. But very reasonably Sotus denies in just. l. 5. q. 7. a. 2. n. 43. n. 13. . 5. c. 17. Therefore, it is said. Fault n. 2.

Lugo, loc. cit., n. 106. Croix l. 3. part. 2. n. 477. punct. 2. §. 4. num. 32. cum Tap. . 5. Reason, because from one side it is not just to oblige someone to a severe penalty without their grave fault; from another side it is not presumed, at least it does not certainly appear, that someone desired to obligate themselves in conscience to make satisfaction for damage or harm committed with mere legal guilt. Laws, however, which are adduced in opposition, obligating with mere legal guilt, either presume theological guilt, as said in q. 2 a. 4 n. 4., or oblige only for external forum, or are not received otherwise, as they say 'Lugo, n. 34. etc. But those laws which absolutely prescribe restitution in certain cases obligate even if there be no sin, but not before the judgment of the judge, as commonly said n. 34.: whatever others may say.

See what is said in lib. 4, n. 100, at the end. I ask. 555. — Similarly in offices it is probable on the same grounds that no one is bound to restitution unless there be a broad fault joined with grave theological reason. Thus, punct. 2. §. 3. n. 27. cum Lugo etc. Even so, it is held also from a light legal fault, one who receives remuneration, as he says: or if the office itself demands great diligence: as Salmant. with others d. l. n. 28. But it is always understood that legal fault is connected with a grave sin, so as to gravely obligate. 556.— « Resp. 2.

From the given response it is evident that they are to be held liable for restitution those who have inflicted harmful injury. This however is twofold: one material, for instance when someone destroys another's property in good faith, that is, judging probatively that it is permissible to him or his own; and the other formal, namely when someone destroys another's property in bad faith, that is, when he knows, or can know and ought to know, that it is not permissible to him and that the thing does not belong to him. See III. Tr. II. C. IV. 2. Chapter 7, Article 6.

Bonac. d. 3. q. 4. p. 6. ## Whereupon you resolve: • 4. He who has incurred an injury from which another has suffered no harm thereby, as if he committed adultery without causing damage to another, is not bound in conscience to restitution; although this is a matter of repairing harm: yet he can nevertheless be compelled by the judge to make amends for the injury. » 2. Whoever has incurred a harmful injury, whether it be merely material damage, is bound to restore it, but only that which the other still possesses from it, or by reason of it, made richer.

3. Quisquis intulit damnum, veliam materialem tantum, tenetur restituere sed nonnisi id quod ex alii re adhuc habet vel quo ex ea factus est dives. Whoever has incurred a formal injury, whether he still possesses the thing or not, is bound to restore it; and indeed only so much as corresponds to the damage sustained. » But whether a venial fault suffices, authors are in controversy; and the opinion of either seems probable, and in practice safe, at least, when conveniently it cannot be restored. » See librum 3, tractatus 2, caput 2, distinzione 7, nota 27.

C. Lugo disp. 8. sect. 5. n. 56. ### DOUBT II. ### Whether those who cooperate in another's damage are bound to restitution? 557 Why are cooperators said to be fivefold? 558 What about the one who commands? 559 What about the one who advises? Qu. I.

Is one who has been constituted wicked held and afterwards compelled to return to restitution? 560 Qu. II. After executing the counsel, whom first shall be held responsible? III.

What, if damage had also occurred without counsel? 562 Question NoneIV. What if there were damage due to doubt, whether counsel was the cause of the damage? 563 Question NoneV.

What if one is determined to cause harm and you merely advise him to do so? VI. Is one bound to make restitution for an induced damage through culpable ignorance? 565 Qu. VII.

Can a greater damage be persuaded to accept less? When is one bound to restore an unjust deposit? When is one bound to hand over under pressure? When do receivers recur? Can one who implores a stolen thing restore it as stolen in order to recover the price? Can the same apply to one who implores a fraudulent contract? How is one bound to participate? What if it is due to fear? What if you hinder another so that he may not repair the damage to another? How is a private cause held responsible? See other cases in 5.587. — « Resp. All are bound who in any way are the cause of and influential and effective source of damage: and those who, being obligated by office and the duty of justice to avoid damage, did not avoid it. Thus commonly doctors.

Whereupon they conclude that those who are encompassed by the words: "Jussio, consilium, consensus, palpum, recurrus, partiopans, mutus, non obstans, non manifestans," are bound to restitution. It is evident from the following cases. 558. — « 4. He is bound to restitution commanding,

whether expressly or tacitly, by word spoken or by deed, from which for example a servant may gather that it will be pleasing, and does it; but he is not bound who merely has a reason for his action under the name of another; nor is one bound if before execution the command be withdrawn, and this become known to the agent: because then there is not a true cause. Mel. . 2. c. 3. d. 3. n. 54.

He is likewise bound by one consulting through prayers, promises, and inducements to bring about condemnation. » According to proposition 39, condemned by Innocence XI. » Because if nevertheless he withdraws his counsel before execution and can advise the contrary even though he does not persuade, it is probable that he may be excused from restitution; especially if he who is about to suffer damage should take heed. See 2. d. 4. q. 6. d. 14.

Sufficiently valid. Council, and 2. mixt. res. 18. et t. 5. resol. 83. » 559. — Question NoneI. whether a consilium is bound to make reparation for damage after subsequently revoking that, which has been done?

The first opinion, which Habert holds in the fourth book, fourth chapter, section two, question three, chapter twelve, note sixteen. Lugo from Just. d. 19. n. 37. Croix l. 3. p. 2. n. 28. n. 439. n. 21. cum . . et aliis communissime, distinguit: Si consulens dederit simplex consilium, vel falsum, vel modo auctoritativum, tunc consilium revocando, vel falsitatem ostendendo executur a restitutione; secus, si insinuaverit motivam, sive modum inferendi damnum. Reason why, even after the consultation has been revoked, this always moves to proceed further.

For if, they say, one has cast fire into a standing cornfield, he is held responsible for the damage, even though afterwards he made efforts with sorrow to extinguish the fire; so too the counselor. The second opinion, which P. Concina holds in tom. 7, p. 434, q. 182, concl. 2, punct. 5, §. 2, n. 447; and also Reg. in p. 3, l. 4, c. 44, q. 2, tr. 46, r. 47, with q. 4, r. 2; likewise S. Anton., is as follows: Sylv. n. 22. and they consider it probable. c. t. 3. n. 143. Bonac. d. 4. q. 2. p. 6. . q. 3. art. 2. n. 3. q. 4. r. 2. vocat sententiam probabilissimam, et 4. tract. 5. p. 3. c. 5. n. 7. valde probabilem vocat, excusat a restitutione semper ac consulens conetur postea melius modo quo potest damnum dissuadere saltem adducendo rationem salutis aeternae quae debet Christiano praeponderare omnibus aliis rationibus mundanis.

Neither does it hinder the equality of fire, which is high, for in that case the fire necessarily operates; but when counsel is recalled, the damage no

longer occurs by virtue of the counsel's power, but solely from the malice of the executor. I deem this second sentence sufficiently probable, but I consider the first one more probable among the probabilities. Indeed rightly they note point 42, n. 158, at the end, and Sporer, n. 22, along with others, that if the consulens cannot prevent the executor from causing damage, he is bound by justice to warn the injured party so that he may take precautions for himself. 560. — Inquiry II. After suffering damage through counsel, first of all one ought to be held bound to restore?

I respond according to Croix l. 3. p. 2. n. 56. de Lugo, et: secùs si soli executori. Si autem sit utilis utrique, utrumque teneeri pro rata; et idem puto, si ex damno illato neutri utile evenerit. In the absence of the other, he is held liable in full. 564. — This is questioned III. Is he bound to restore the damage who gave counsel to do so, if the damage would have occurred even without that counsel?

I respond according to question 3, article 3, note 3: that is, if the executor himself was determined to compensation, then the persuader is under no obligation. The reason is because where there has intervened merely an injury but without damage, no obligation to restore is given, as wisely teaches the learned doctor in his book: If someone has suffered an injury and not a loss, then according to law real restoration is not to be made to him, but only in accordance with the kind of injury, it is fitting that correction be made through similar satisfaction. Accordingly (as rightly stated at 562.— Question NoneIV.

Whether in a doubt, or your counsel, whether given permission, consent, recourse, palpitation, silence, etc., was the cause of damage, or the death of another, to be held liable for restitution? The first opinion is very probable in affirming that, and Habert holds this in book 4, chapter 4, section 2, question 4. Lugo d. 49. n. 24. l. 2. d. 44. n. 47. et Dec. l. 4. c. 40. n. 44. cum Covar. Ang. 3. p. 2. n. 574. qu. 4. r. 3. et valde adhaeret . 2. c. 27. n. 43. licet prius in c. 43. n. 38. expressè contra-rium tenuerit.

Reason: 4. because in such a doubt it possesses the delict of evil counsel, since the counsel itself was fitting for causing harm to be recommended; in doubt it is presumed that it was itself the cause of the damage; just as if someone inflicts upon another a wound that is fitting de se for killing, and afterwards the other dies, it is presumed from that wound that he died; hence the consulter should prove that death or some other harm did not proceed from his own liberty. Reason, 2. because for that which is established as possession, there is also established presumption; but it is not presumed that the executor has caused damage without counsel, because no one is presumed to be evil; at least he is not presumed to have

been determined to cause damage, therefore possession is established for the obligation of the consulenter: and in this case his own possession over his goods collapses. They nevertheless receive in Decretals d. n. 44: if the homicide was a bitter enemy of the one killed, or had already threatened the murder, and similar cases: likewise if the executor, worthy of faith, affirmed that he had not been moved by counsel, as they say in the same place c. 27 num. 43, and Roncaglia d. c. 4 qu. 4 in doubt, whether counsel was given or whether the damage was incurred, so as to be held without any restitution consulting. The second opinion, however, which is also sufficiently probable, denies in such a doubt an obligation of restitution; thus Bus. 2. c. 43. dub. 4. n. 38., and P. de rest. c. 4. punct. 5. §. 4. n. 413., and also l. oit. et probabilem putat . n. 146., and with this Et holds that D. Thom. 2. 2. q. 62. art. 7, where he teaches: In other cases enumerated, however, one is not always obliged to restore; for the counsel, or adultery, or something of this kind, is not always an efficacious cause of robbery.

Wherefore then is the counselor or the approver alone bound to restitution, when it can be probabilistically estimated that an unjust acceptance has been made on account of such causes. Therefore, according to that word; for it signifies a morally certain persuasion (if it be from one side), which has been the cause of damage, as wisely explains the learned P. Concina t. 7. de Just. diss. 2. c. 9. §. 4. n. 14., saying: By "probabiliter," the Sacred Doctor understands a moral persuasion and certainty. The reason for this proposition is that general rule, namely, that no one is obligated to restitution unless it be absolutely certain that he himself was the true cause of the damage. As for the fourth reason, which assumes an influence when a suitable counsel is apt to influence, it is responded to from the Decretals that a suitable counsel being apt to influence does not suffice for an obligation of restitution; but in addition it is required that it actually influence: since however from Thomas the Doctor it follows that counsel is not always the cause of damage: for counsel or adultery is not always an efficacious cause of robbery, hence an influence is not presumed unless it be proven.

The reason brought forward for the wound is false, because a lethal wound necessarily is a cause of death, but not so with counsel. To the second reason, namely that the executor's offense is not presumed, it is responded that this rule runs for him who is altogether innocent, not for him who has already shown himself guilty; for since he himself has voluntarily committed the crime, either his own evil will is presumed to have caused it, or at least there is positive doubt about this, and in a doubt his goods should not be deprived of another. P. Concina loc. cit. addit tertiam sententiam, dicens, quod in tali dubio consiliator tenetur restituere tantum pro rata dubii. But this is obstructed by the fact that either he certainly

possesses counsel; and then he is held to the whole damage; or he does not certainly possess counsel, and then he is held to nothing, because the condition of possessing one's own goods is better; which in matters of justice all teach us, as we saw in n. 547.

He says however, canon 44, that in doubt whether counsel was a cause of the killing, the one consulting is to be regarded as irregular, because since murder is certain, each one in doubt whether he was cooperant in it is to be regarded as irregular, according to c. Ad audientiam, and c. Significasti, concerning homicide. But see what is to be said about this in lib. 7. n. 374. It is certain to me that, if you truly moved someone to inflict damage by means of a wrongful counsel, you are bound to restitution even if it were certainly true that another would have equally persuaded him, even though he lacked. And thus P. Concina l.c. §4. q4. with the common opinion, and Sporer n.7. with others 563. — Question None

V. What if another is already determined to harm, for example, to kill, and you merely advise a means, namely, that he should use poison instead of a sword; in that place and at that time, not in another? There is a double probable sentence. First it says that you are to be held responsible for restitution, because by advising a modicum you contribute to the essence of the harm; but by advising how the harm should be inflicted more quickly, you become the cause of the entire harm, since through that time period the other party could have changed the animal.

Thus Cajet. 1. 2. q. 62. a. 7. . q. 3. a. 3. n. 5. with Mol. Reb. etc. The second opinion absolutely excuses thee from restitution, provided it be certain that the other will not have his depraved mind changed. Thus Lugo d. 19. sect. 1. n. 9. and 45. Laicus l. 3. sect. 5. tr. 2. c. 5. n. 5.

Lessius l. 2. c. 13. n. 6. Sporer c. 3. n. 27. Holzmann de restit. c. 3. n. 437., et putant probabilem punctum 5. §. 4. n. 442. cum S. Anton. Prado, Sylv. and this is more probable for me.

It is likewise untenable to say that the supposed hypothesis would certainly bring about damage without counsel, always remaining uncertain, since the human mind is always mutable. For it is replied that in such a doubt, the influx of the consultant leading to harm was not certain, according to what we said above under number 562. Resp. 2. (quod magis urget) possessionem hic stare pro determinatione prava voluntatis executoris. And thus likewise, c. et. cum Adrian.

St. Ant. Sylv. gr. si quis teneat scalam ei, qui etiam ascenderet sine suo

auxilio.. 564. — Question NoneVI. Is one bound to make restitution for the damage suffered through ignorance, but with grave fault?

Respond. Cum art. 3. n. 7. ex c. 2. n. 432. n. 34. distinguendo: Si consilium dant ex suo statu, v. gr., advocati aut confessarii existimatur peritus, tenetur: quia tunc vere decipit. Nevertheless, contrary to this, if it is known that one is inexperienced: because then the inference of damage is more imputed to him who, through imprudence, follows such advice; unless there be also counsel given with deceit or intention of causing harm. This, however, proceeds when it is a matter of damage solely to the petitioner's counsel: for otherwise one would have to say, if it were a matter of damage to a third party. Namque hic notandum est: qui consilium noxium dedit, postea tenetur quantum potest facere, ut non accidat damnum, licet inculpabiliter egerit.

In the same manner, he who without grave fault set fire to a house belonging to another is bound by justice to prevent it if he can do so without great inconvenience, lest someone else be injured through his action. Thus... and... 565. — Question NoneVII. Can a prepared person be persuaded to inflict less damage, against the same individual, for instance, by being persuaded to kill someone willingly, so that he merely strikes?

They affirm with L. N. 10. this n. 41. and the more common opinion. I spoke against the same person, because against another in particular, it is not advisable to counsel any amount of damage. Thus . d. n. 10. at the end. It is added; or even to persuade, it would be less evil to rob a rich Peter than a poor Paul.

But he grants that it can be said of him who wishes to be robbed by Titius, that he is robbed by another in general; because thereby the robbery is diverted from him, and no one is injured in particular. But I do not acquiesce to this with Sporer c. 3, n. 27, because thereby damage to another is already advised. He also grants this, 36. Innoc.

XI. To one who willingly allows himself to be robbed by Peter of something, on account of which he would be reduced to extreme poverty, it is possible to become attached, so as to snatch even a small amount from Paul, the richest, otherwise in this regard he would be irrationally unwilling. 566. — « 3. It is likewise held, who by his consent, calculation, or suffrage is an effective cause of harm. . 3. n. 23. c. 4. Therefore, those last ones who give their suffrage in an unjust manner sin, but are not bound to restitution, since they are not a cause of damage unless they act according to a contract. But it is questioned whether, if one doubts

whether his suffrage was prior and necessary for some damage to be inflicted upon another, he is bound to restitution?

There is a triple opinion. The first opinion says that he is bound to nothing, and this is upheld by 29. n. 20. and Sporer de rest. c. 3. n. 34., which calls it not improbable. Reason, because in doubt the condition of the possessor is better in obtaining exemption from the obligation of restitution. The second sentence, which is held by point 5 section 2 n. 423 with others, if the first alone were bound, since the first are unknown, no one would be bound, and from no one would damage be recompensed: but this is answered, that it would happen by chance.

However, the third true opinion teaches that individuals are bound to contribute proportionately towards the total damage (4). The reason why they are not held liable in full for the total damage is because here a doubt arises, whether each one of them was or was not the cause of the damage: and in such a doubt no one is bound to make a certain restitution. The reason why individuals are held pro rata is because each one at least has impaired his right which he had for demanding restitution of the damage from others who were contributing their suffrage. Thus Lugo d. 19. n. 22. Sporer l.c. n. 35.

Mol. d. 736. n. 6. But it must be noted here with P. Concina c. 9, § 2, n. 27, that if he who is bound to offer support lastly anticipates and designates others as revocators, then he is held responsible for the restoration of damage if he neglects to offer support. In dubio autem dicit hic auctor non praesumi alios non mutaturos comelium; consentio, si alii incapabiliter erraverint; secus, si culpabiliter, quia tunc possidet prava eorum voluntas. 567. — « 4. Item palpum aut qui laude adulatone vel exprebratone ignavia aliterve aliam ad damnum inferendum excitat animat.

Lessius, "Filixio. l. c." (Dummodo judicet, sic ad damnum influere licet non intendat.) n. 424. Item, qui propter inferenti damnum praebuit recursum, illum recepit, illius furtum aut instrumenta occultavit vel ea emendo rapinas fovet, etc., ibidem. These indeed all are bound to restore to the owner, as is he to whom things stolen have been entrusted for custody (unless the theft has been made known), even though they did not intend harm. And thus it teaches that those who purchase fragments of cloth or garments from tailors commit a sin.

It is permissible ibidem to excuse those who purchase such fragments from master tailors, because from these they are usually deprived more than

what these fragments merit as just remuneration; hence they lawfully retain them. "I do not assent to this doctrine, because I rather hold that what is usually opposite occurs." However, commonly, unless contrary indications urge otherwise, a tailor is not presumed to have fraudulently acted. Therefore, note that innkeepers are not excused from sin who have received money or other goods from members of the household, or things taken surreptitiously from parents. Bon. etc. Qui vero, post delictum, ipsum reum juvat ad fugiendum (non concurrendo ad delictum), non tenetur restituere, modo non det illi spem refugii posterum: tum quia non est causa damni; tum quia reo licet fugere, ut infra dicetur, l. 5. c. 3. d. 7.

Therefore he who receives is bound to restoration, when the reception is the cause of theft. Thus they are bound to make amends for the damages done to the lord, provided that those causing the damage do not hinder their own servants from seeking refuge later on: firstly, because they are not the cause of the harm; secondly, because it is permissible for the one damaged to flee, as will be said below, lib. 5, cap. 3, dec. 7. Thus, point 5, section 2, number 425, and others commonly. Non tenetur autem, qui post fur- tum juvat furem ad fugiendum, modo non influat in damna futura, ut bene notat Busemb. hic in fine, et consentit P. Concina p. 437. n. 30.

Neither is he bound who receives stolen goods or a thief, not because he receives a thief, but because he receives an acquaintance or a kinsman: nor on account of office, such as that of bailiff, even though he receive the thief before the crime. Thus Counc. loc. cit. n. 425. at the end according to the common opinion. This, however, is to be understood in the manner that we have said, so that it does not affect future thefts, as Croix rightly points out in n. 37, 569. — Whether, nevertheless, the purchaser of a stolen item can restore it to the thief to recover the price? The first opinion holds that he can do so, because in this way he does not cause damage to the lord, since he restores the thing to the same state in which it was.

Thus S. T. 2. C. 5. §. 2. 47. sect. 2. n. 29. cum . Ang. Mald. and others (as he asserts) commonly: thus also 2. c. 14. dub. 3. n. 14. n. 450. . punct. 4. §. 6. n. 83. cum Prado, de rest. n. 38. cum others, sufficiently comm. The second opinion, however, which Cajetan holds in the second part, book two, question sixty-two, article six.

Concilium tomum septimum pag. 412 et Croix librum tertium pag. 2 n. 400 cum Molina; et ideoque si furie eam redderet illam in deterioriorem statum dejiceret et sic injuriam domino irrogaret; nemini enim licet vestem alterius in ignem injicere ut suam salvet. This sentiment is indeed much probable, but no less probable, and perhaps more so is the first; and these two reasons which I subjoin very urgently constrain me: The first, because

you are not bound to preserve the property of the Lord with your own loss; and hence you can permit the thief to receive that property, lest you lose your own price. Accordingly, if you have taken an alien thing which you found on the road, and afterwards know that you will suffer damage if you retain it, then you can properly place it in the same spot again and permit another to take it away; even though by doing this you may bring the thing into a worse state; for then the acceptance of the theft comes from his own malice, and your cooperation is merely permissive of alien damage which you are not bound to avoid with your own loss. Second reason, because, since everyone has a right to recover his own goods, no one is forbidden that action which is in itself necessary and direct for repairing his own damage, although indirectly and by chance it may cause harm to another; as if someone cannot avoid death from an enemy pursuing him except by trampling on a baptized child with a horse, which indeed runs, even though the child's death follows, as commonly taught by the Doctors of the Church in Decretum, lib. 2, cap. 9, n. 58.

Cordub. and Cajet. also Bussemb. in the aforementioned book, chapter 4, number 393, with Lugo, and Escob. 25 on homicide, chapter 4, point 6, section 4, number 133, and on restitution, chapter 4, point 4, section 6, number 84. With this, because he cannot rescind that unless the stolen thing is restored to the thief, it necessarily follows that he must restore the thing to the thief for his own recovery; hence, if your thing is placed in a worse state by way of detention, since the dissolution of the contract is directly and necessarily licit; damage is incidentally inflicted upon the lord. You will say: Therefore, according to this judgment, in the case where a thief seeks to take away your property unless you receive and hand over to him some alien property, you may steal this one, so that you do not lose your own? Response is given: This must not be done, because I do not have the right to inflict damage upon another so that my goods may be preserved; and therefore, if I were to do this, I would commit an illicit and unjust act. But I have a certain right to dissolve that purchase, and by dissolving it I perform a licit act; hence, if from the proximate harm there happens by accident something else, I permit that thing to happen lawfully beyond my intention, so that I may be indemnified; just as I permit the death of the child, according to what was said before, in order to safeguard my life, because I have a right to preserve it. Finally, it is necessary to distinguish the terms which are confused by the adversaries: one thing is to take away another’s property; another thing is not to preserve it; one thing is to cause damage to another; another thing is to permit damage to another.

However, it must be noted that this judgment can have its place only when the purchaser has no other means whatsoever of recovering his price

except by restoring the thing to the thief. Moreover, a greater doubt arises: whether the purchaser can restore the thing to the thief who bought it in bad faith? They commonly deny this, namely D. C., and E. and others according to Bus. dub. V. n. 600. et . c. n. 87. cum aliis. But still they affirm number 455. . c. n. 39. et .

Prado, Sylw. ibid. Item Alcnsis, Gabriel, ap. Lugo 1. c. n. 37. And they call this judgment not improbable. Chapter number 24. And Malder.

And indeed not without reason Busemb. considers it probable after being absolved, nay, Lugo perhaps even more so. Reason, because although this one having sinned corrects the thing maliciously, nevertheless after the purchase he has the right to rescind the contract in good faith according to the agreement, returning the thing stolen, as was proven above. Nor does it hinder to say (as Lugo himself states) that here there intervenes an unjust acceptance on the part of the purchaser; for itself, after retraction, is not in fact a cause by which the lord loses his property; truly (as we said in n. 554), for obligation to restitution to arise requires not only that the action of the acceptor be unjust, but also that it actually result in damage to another; in this case, however, although the acceptance was injurious to the lord, it did not cause him any harm, since the damage had already been sustained by the theft of the thief, as stated in the preceding n. 574. — "Likewise, one who participates in the spoil or cooperates in some manner: such as applying ladders, preparing instruments, writing letters, etc., iniquitous torments brought to bear in war; yet those are excused" (provided that the action itself is not evil), who are forced to do so not of their own accord but out of just fear; for example, when peasants are compelled by the military's theft to carry off their spoils or drive away their cattle. 6. n. 49. "Participantes dupliciter intelligi possunt, nempe in re furata, et in actione furti."

Those who are considered participants in the stolen goods are bound to restore whatever thereof has come to them. As for participants in the act of theft, it must be considered whether they themselves contribute to the whole damage or to a part thereof, according to what is said in n. 579. But there is a question whether participation in the act of theft excuses those who cooperate in causing damage in some way on account of the fear of great harm. The first opinion, which is most commonly held among recent authors, maintains that restitution should be made according to cap. 4, punet. 5, § 2, n. 427 and 429.

Sporer from 7th preface chapter 3 number 44 and number 443. Fiva eod. tit. q. 3. art. 4. num. 46. cum. 2. cap. 43. n. 29. et 30. 4. q. 2. p. 41. n. 8. distinguit: Si actiones cooperantis remotè concurrant ad furtum, ut esset,

scalam tenere furi ascendenti, tradere ipsi claves, sive instrumenta ad reserandam arcam, deferre praedam jam ablalam, et similia: tunc cooperans, ob metum mortis, vel alterius gra- vis mali, excusatur, tam à restitutione, quam à culpa; quia iste sunt actiones per se indifferentes, neque laedunt dominum, nisi ex malitia faris. Thus, if actions be proximately inclined towards theft, as to break doors, burn a house, forge false keys, throw goods stolen through a window, cast cattle from a stable, and similar things; then the cooperator is not excused, neither from guilt nor from restitution. Reason, as they say, is because these actions, being intrinsically evil, cannot be excused on account of any fear.

Thus AA. cite; but c. 8 punishes. 5 § 2 n. 75 referring back, say, that actions of a prior kind, first mentioned, are also intrinsically evil. The reason, as they say, is that these actions have a proximate influence on the sin of injustice, which one intends to commit by stealing; and thus they are intrinsically evil and formally unjust, even if they are proposed for the sake of avoiding death. Et tamen licet surripere vel destruere bona aliena propter tantum periculum, quia in hoc casu dominus esset irrationabiliter invitus, si nollet consentire ut tu, constitutus in necessitate extrema, sua bona acciperes vel perderes ad servandam vitam; non tamen potes proximè cooperari injustae actioni furis; quia tunc formaliter concurrereres ad peccatum ipsius et justitiam laederes; ideòque si hoc facies, peccabis et ad restitutionem teneris. So great is your excuse if the evil that threatens you be great and serious, while the inconvenience which the lord will suffer be slight; or if damage were to be inflicted even in this case, pari passu, without your consent; to which Lagm. l. 3, tr. 2, c. 5, n. 5, agrees with St. Anton.

Mire. Mol. The second opinion, however, which Busemb. holds (see l. 3, n. 68; 1 cap. 7, n. 30; and 2 c. 16, n. 59), considers that such participants do not sin if they perform the aforementioned actions out of fear of great harm. In this doubt, presenting my judgment to the wise as one less wise, and with none preceding me, I say thus: This sin of the cooperator can be considered either in respect to the damage that the lord will suffer, or in respect to the damage inflicted by the thief.

I say with respect to the Lord, that if you alone fear the damage to your own faculties, you will not be able to cooperate without sin in the harm done to another, so as to preserve yourself indemnified in your own goods; unless you do this with an intention of compensation, as Bonac. says above [cited]. If however you fear the evil of a higher order than goods, namely death, or mutilation of a member, or grave infamy; then you can cooperate without sin in the damage to another, if besides your intention you do so, as also Article 3: Section 7. Point 1. § 3 says. Fifth. Because then the Lord

is bound to consent, so that you may still consult your own life or honor with regard to his goods, otherwise it would be irrationally and most unjustly forced upon him.

As to the respect of the sin of theft, I deem the second opinion more probable. Reason, because all the aforementioned actions, whether primary or secondary in nature, are really indifferent, since they can be either licit or illicit according to the end by which they are made. For if you employ those actions with a wicked intent to harm your lord, they will certainly be illicit for you: but if you employ them to prevent damage to yourself in life or honor, then they will be licit for you; and that which the thief appropriates is directed toward fulfilling his own wicked will, this happens by chance, and you cooperate materially in that sin of his only when it is permitted on just grounds. It is not true that you formally cooperate in the sin of theft at that time; for this would be the case if you positively influenced his evil will; but when you merely provide those actions by which the thief later acts to cause damage, your action itself will not be the cause of the harm, but only the malice of the thief, according to what we have more fully explained regarding charity. l. 3. n. 63. vers.

To distinguish. And that those actions are not formally influential in the sin of theft seems to me indubitable; for otherwise, if a thief were to compel you to hammer his chest against your own chestnut chest so as to hand over money contained therein, you would not be able to do this without sin, because you would formally cooperate in that person's sin. But who would dare to assert this with sound mind? However, the doctrine of P. Molina favors me, who in Tom. 1, d. 105, c. 5, thus teaches: It is lawful for captives out of fear of death or mutilation of a member to inflict some harm on Christians in external goods for the destruction of the dominion of the Infidels, by destroying, taking, etc., since in that case the outcome is at their extremest necessity for the preservation of life.

Therefore, quanto fas est cuique in extrema necessitate sumere de bonis aliorum ad conservandam propriam vitam, tantum damnum fas erit ejusmodi captivis inferre bonis aliorum, ad vitam tuendam. He who thus argues: For I am not bound to suffer damage so that another's sin may be avenged; indeed (namely, the thief) he should impute his own malice to himself; this would be wrongly imputed to me, since my intention is solely to take care of my affairs and free them from harm. This is expressly confirmed by St. Thomas, who says: Although he who falls among robbers may manifest his goods, which they are committing a sin in seizing, for this reason, that it may not happen that we be killed, by the example of ten men who said to Ismael: Do not kill us, because we have treasures in

the field. Jer. 41.

St. Thomas, II-II, question 78, article 4. The greater doubt is, whether such a cooperator is bound to restoration? All affirm the first opinion as stated above; but considering its intrinsic reason, it seems more probable to me that P. Milante neither has sinned nor is bound by necessity to make restitution. This question seems to depend on another one, referred to number 520.

What. V. namely, whether, seizing another's goods in extremis necessitatis, when that necessity ceases, is bound to make restitution? There we said that it is the true judgment that one is bound to restore if there had not been hope of relief; otherwise, if one was in need and had hope, then one is not bound to restore. And thus it seems that in this present case, namely, if a participant, moved by fear of death or serious infamy, contributes to another's harm out of necessity, then he is exempted from restitution only when at the time of cooperation he was absolutely poor, not only in goods but also in hope.

But here I feel the same as above, using the same distinction, namely that if a participant assists a thief in inflicting damage out of fear of a similar grave damage to one's own goods, then in that case he is bound to restitution; ## Cap. 2. Dub. 2. On restitution: because no one can cooperate in another's harm so as to avoid his own damage to his goods. I think otherwise, if one had aided a thief under compulsion by fear of death or grave infamy: for then this person is not bound to restitution, neither from what has been received nor from an unjust reception.

Not from accepted property, because he has become richer in nothing; not from unjust acquisition, because he did not sin, as we have already approved. But you may ask, why is he who uses another's property in extremis necessity held to restore it when he is not absolutely poor? I respond: he is bound for this reason, because, when he can provide for himself from his own resources and yet receives alien property when he cannot receive his own, which he has elsewhere, then he evades becoming richer; and therefore he is bound. But in our case, by cooperating in nothingness he becomes richer; and therefore he is under no obligation to restore anything; nor otherwise obligated to offer and substitute his own goods so as to repair another's damage.

The learned P. M. agrees with me. Milante in prop. 15. Innocent. XI. Where he says that he who assists such actions by helping a thief does not sin nor is bound to restitution, for thus it is written: Therefore those who

cooperate with the innocent, whoever from fear rush to encounter the man of courage.

That which is evil to take from another by violence, and indeed from an intrinsic standpoint? Without doubt, it is from this alone that one suffers an unwilling harm; but in the aforementioned case, the Lord would not be unwilling regarding the harm he would suffer, if the thing were taken away: hence we must suppose, when it cannot be supposed that he would be unwilling in a case where someone, cooperating in theft, would immerse himself in damage; for no one can postpone life before being harmed by a temporal good, which is the sense of all and the dictate of nature. From hence he asserts that this cooperator ought not to be so much excused from guilt as from restitution. The same is inferred from Laymann's judgment, who in book 3, treatise 4, chapter 4, note 7, together with P. Navarrus and Medullinus in a similar case says: If anyone casts alien goods into the sea so as not to perish himself, he is not bound to any restitution, since neither has he committed an injury nor can he possess the alien thing.

I deem it altogether otherwise to be said, if one were to cooperate in confirming or augmenting the wicked will of a thief, for instance, by turning his back (commonly understood as having watched his back), or by informing him of an opportune time for stealing, and similar actions; because thereby he would influence the very perverse will of the thief, making him at least more bold, and thus formally cooperate in that man's sin, which never is permitted. Likewise it must be said, if anyone should provide such cooperation to one who intends to kill, by delivering a sword (4), or keys for killing (See number 697). Tender age), or by submitting his shoulders to be climbed upon, or by carrying a ladder, etc. (1) "As regards damage, I said that no one can cooperate in another's damage so as to be released from it" à suo, when the damage is of the same kind. As regards this matter, even when there is risk of death, to deny a willing sword to one who wishes to kill an enemy with it, because I cannot avoid death, positively to cooperate in the death of the neighbor is not possible.

Thus S. Alph. in 10. n. 56. Hereby concerning this matter, even when one is willing to grant a sword to him who seeks to kill his enemy with it out of danger of death, because I cannot avoid death, cooperating positively in the death of my neighbor is placed. However, they rightly say point 44. S. 2. n. 204. cum Soto, 2. n. 265. quia aliter non tenetur impedire damnum alterius (etiamsi alter sit in extrema necessitate damni patiendi) cum æquali proprio detrimento.

Hence we have said in book 3, citing n. 66, that if the Lord wished to

ascend to defile a virgin, except for the fear of his own death, one could excuse the servant from aiding the lord by carrying the ladder, submitting his shoulders, etc., because the life of the servant prevails over the honor of the virgin. I wonder here why P. Milante, when he said in the aforementioned place concerning the aforementioned actions as to cooperation in stealing, stated that they are not intrinsically evil, but there asserted that they are intrinsically evil as to cooperation in committing murder, since no difference can be assigned in either case, as rightly adverted to in chapter 8, point 5, section 2, note 75. But we, taking up the matter from our own principles, 'hold openly approved, that in neither case are those cooperations intrinsically evil, provided that a just and proportionate cause intervenes.' 572. — Here incidentally it should be noted, that if you by your prayers or counsel impede Titius so that he himself does not repair the damage to Caius, you commit a sin against charity, just as Titius would sin if he maliciously permitted that damage; whereas this is not a sin against justice; hence you are not bound to restitution. Thus Croix with Mol. 573. — "7."

Thus are held in regard those causes which are privatively concurrent with harm to another; namely, a mute person, if he does not cry out when he is able to do so: or one who does not obstruct nor manifest, but then only when such persons are bound by justice to take care to avoid harm through some pact, or office, or stipend, etc. St. Thomas 2. 2. q. 62. art. 7. Thus the prince, the magistrate, and the commander of war are bound to restore damages which are inflicted by beasts, robbers, or soldiers, because of their culpable negligence. Item consiliarii, canonicos taceentes, absentantes se, non impedientes iniquam constitutionem, vel electionem.

Item tutors, administratores bonorum, etc., non impedientes damna pupillis, minoribus, et ecclesiis proveniencia. Item custodes montium, vinearum, sylvarum, agrorum, piscinarum, qui damna non impediunt, vel facta non manifestant. Mol. d. 146. c. 2. qu. 42. vide supra l. 4. t. 3 c. 2. » (Servants who guard the lord’s goods also sin if they do not prevent damages from strangers and are bound to restitution. § 3, n. 438. With Lugo, 4, n. 344.) « Item, princes and lords of territories, if they know public roads to be infested by robbers and when they can prevent it, do not hinder such infestation, are bound to compensate merchants and other travelers for the damages which they suffer from these robbers. t. 7, r. 38, 574. — « 8.

The aforementioned are not bound to restitution when they were not the efficacious cause of the damage; for instance, if a thief as a murderer would have acted with absolute intention regardless of another's mandate or counsel, likewise if in chapter another has given their suffrage before

you such that it appears you will gain nothing even if you deny it; then it is sin to seek restitution by adding your own demand, or by mandating, consulting, etc. 575. — « 9. It is probable that the aforementioned are not to be held responsible, if it is not moratorily certain that their mandate or counsel has efficaciously influenced: because in doubt the condition of the possessor is better, especially concerning matters of justice. Dian t. 5. misc. r. 64. Tang. 2. 2. d. 4. q. 6. d. 14.

"(See what was said above at no. 563.) Damage, it recommends, so that less may be inflicted upon it, because then it profitably manages another's business." I say "to him," because it is not permissible to impede damage to one person when injury is inflicted upon another. (See what has been said here at n. 565.) 578. — « 42. Neither is he bound (contrary to Navarr. yet not nevertheless is he bound by obligation towards a third party, as if justice required that he should guard against that damage or ensure that it be compensated for him). It seems, however, that one should speak thus: if positive restitution is impeded either through malice or through gross ignorance, or through broad fault, then by his own counsel he becomes an effective cause of harm.

See 4. q. 2. p. 44. 3. t. 4. c. 6. and infra l. 6. tr. 4. c. 2. d. 5. SEE THE FOLLOWING: ON PENANCE, BOOK VI, NUMBER 624. DUBIUM III. As stated above, are each of these considered individually to be restored in reality, and in what order? 579. Who are bound to restore in full?

Who are bound first to restore in full? What, if the one who has been damaged forgives the restitution? 579. — “Resp.” When several wrongdoers, either individually separately acting upon their own property, or jointly, and some more, others less, affecting damage to others, hence from such an order and measure of the effect of damage, the order and measure of restitution must be derived. Thus commonly the Doctors.

Wherefore you resolve: » 4. If several, without consent, individually and by chance incur damage, each is not bound to restore more than he himself has caused. III. tract. 2. c. 6. » 2. If many with consent and mutually assisting did this, each is bound solidarily to restore the whole damage: because each is the cause of the entire damage, since one assists another, and it proceeds from the confidence which they have in the assistance of others.

Wherefore, if one of them made restitution, he can demand it from the rest, namely from the principal in full, or, if he does not wish to do so, from the rest according to the proportion of each. 4. quæstio 2. partitas 44.

ex Vasquez. Well. Full. And so: It is asked, whether singular causes, concurring to damage, are held liable jointly?

Distinguish: si res est individua, ut incendere domum, occidere hominem, tradere navem, etc., tunc quisque cooperans tenetur in solidum; et hoc, etiamsi sine illo damno eveniret. Reason, because then morally the whole effect proceeds from each individual cause; for, on account of the concurrence, the particular cooperation of each constitutes one action against justice; hence, since the damage arises from this single action, all are obligated in solidum to restitution. Thus probably 4. point 5. section 5. number 451 with Soto, Bon. . etc. And the same is held 2. book 43. chapter 4. number 34. (Number 35 excises it.) If anyone did not concur in the damage immediately, but only mediately by providing instruments, helping to ascend, etc.) However, the opinion numbered 47 and 21 is still more probable.

Sylv. v. q. 6. Angle of fifth. Larceny § 46, and they consider it sufficiently probable according to Lugo in Decretals, d. 19, n. 83, and previously c. 3, n. 76: with the Dictionary and others: these say that those who are merely cooperating for their own part, if damage were also to occur without them. Reason (as Lugo says), because since the obligation of restitution hangs from the influx or causality in the damage, the obligation should not be greater than the influx itself; therefore, just as each one contributes partially, so too is each one obligated partially.

Since, namely, whoever contributes merely to a part of some damage that is divided, although he may have contributed with others to the whole damage, nevertheless he is held only to his own part of the damage by reason of the partiality of the thing concerning the caused damage; so too whoever contributes partially to an individual damage, by reason of the partiality of causality or influx, is only partially bound, because the damage proceeds from him only partially. And it does not seem to dissent from this doctrine; for dict. n. 35 states that even the cooperant in the whole damage is obligated, when without him or his similar helper, the damage would not be incurred, according to Lessius. According to Lessius, dub. 2., n. 2., ibid., n. 149: if the damage would not have occurred without his assistance; for then he is certainly bound to the whole, even though, by himself not providing aid, another certainly would have provided the same assistance. If however the thing is divisible, as when a vineyard or treasure is stolen, then the principal mover is bound to the whole, while those cooperating are bound only to their part, even though they may have concurred to the damage by common counsel.

Thus Lugo, d. 49, n. 99, punct. 5, §. 5, n. 147, cum 3 p. 2, n. 62, who

thinks that in the case of common counsel each one is held solidarily responsible. If however all mutually excite or move one another to damage (so that damage would not occur if each were not contributing, as Croix says in n. 53), then certainly each is held in solidum; thus d. l. n. 148. When however there is doubt whether each one was a cause of the entire damage, he is not held liable except for his own part, according to what we said above in Dub. 2, n. 562. Whether, when several are held in solidum, each is bound to restore the whole, if there is doubt whether the associate has restored it?

They deny, n. 452, and in the title chapter 5, question 5, saying that each one is to be held only to restore his own part, because it must be presumed that other associates have already restored their portions. But this is by no means approved by me. However, it should be noted that even though beginners are bound in solidum, rarely is it expedient to obligate them to the whole; for these find it difficult to persuade themselves that they are bound to restore the part taken from their associates. But surely it is sufficiently presumed that those to whom restitution is owed consent to their having restitution made only of the part taken from them; since otherwise it would be very much to be feared that they would give nothing back at all if obliged to restore the whole (4). 580. — « 3.

Because if the damaging action has been profitable, and among some cooperators the thing taken away still exists there, or he has maliciously absorbed it, he is first bound to restore either the same or its equivalent; and if that one does not do this, the others are bound to do so. If the damaging action has not been profitable because the thing perished and was destroyed; as happens, for example, in burning, maiming, or destruction, then before others he is first bound to restore it who commanded it, or who was the primary cause of it, or the principal executor, such as the prince in war and the general; and if that one will not do so, or because he does not wish to, or because he cannot, the rest are bound, for instance, the other soldiers. Although it is theoretically true speculatively about soldiers, practically they are excused by accident: firstly because they cannot restore the whole; secondly because the will and expectation of their lords do not permit them to restore more than their own part; hence, if they can restore this, they are bound to do so: similarly, if anything else remains to them from the unjust. . 3. t. 2. cap. 6. n. 5. ex Caj. Moralia etc. - Imò 4. q. 2. p. 40. n. 43. ex Vasq. - . 4. n. 37. they say, a private soldier who did not lead others into the damage inflicted by the entire army is not bound to restore the whole of the damage carried off by the entire army, but only his own part.

See above tome 4, chapter 4, decree 5, article 3. The order of restoration

regards those who cooperate: I. It is bound to restore the one who gives the command; whether it be counsel given to another, to cause damage for the sake of justice, as stated in point 5, section 4, note 144, with Les and Lag and Croix book 3, page 2, note 55, with II. He is bound to execute [it].

III. Other positive causes are held to be binding, such as giving counsel for the grace of another, etc., IV. Negative causes. n. 442. and 445. 584. – “5. If the one who has suffered damage and is entitled to reparation releases the principal - the damnumferens, even less are those primarily freed from obligation; but not conversely; for when the principal falls, the accessory also falls, not the other way around. — See above chapter. Here it should be noted that if a creditor promises one of several equally principal debtors that he will not trouble him, it is considered as though he had remitted part of his claim; for if he were to demand the whole from the others, that person would be compelled by them to make restitution, and thus the promise would be nugatory.

DOUBT IV. Is he bound to restore who has hindered another from obtaining some good? 582 What if someone hinders another, without violence or fraud, from obtaining a just good? 583 What if someone hinders through falsehood so that goods are not applied on account of an unsatisfied tax? 584 What if someone by addition, without violence or fraud, causes another not to obtain some good? 585 Is it the same for the Bishop to confer a benefit upon a worthy soul and be bound to restoration? What if a benefit was due to someone on account of participation? Would he who causes death be bound to restitution so that another might be driven to murder? Remitted to n. 636. 337 An teneatur ad damnum impediens vi, aut fraude, etc. P Quid, si precibus importunissimis, aut meus? 333 An tenecatur religio suadeans tastatori ut relinquat bona suo monasterio, relicta Ecclesia matrice? 582.— « R esp.

To be considered, whether the right of some is injured, which has from nature, law, or otherwise; and whether anyone has impeded another by force, fraud, calumny, and lies: but rather in some other way. Therefore, according to p. 42. The following cases are resolved: « 4. Whoever impedes another from acquiring his due by justice is bound to restitution. d. 18. c. 3. q. 42. n. 77.

» 2. If the thing was not due by reason of justice but conferred by free will, then he who induces the distributor without violence, fraud, or calumny to confer gratuitously an office, a legacy, an ecclesiastical benefice, and similar free gifts upon one to whom it had been constituted or petitioned, rather than to him himself or even to someone less worthy; although this person can often gravely sin, especially if he does so out of hatred or evil

intent; nevertheless, he is not bound to restitution. Azor, III, libri I, caput IX. "583.— 'Question Nonehlc I."

He who by frauds, or lies, or through false witnesses impedes that goods which for a crime, e.g., for non-payment of taxes, or some other reason were dedicated to the fisc, may be applied to the fisc, is bound to make restitution? It is responded to according to 2. c. 42. dub. 48. n. 434. 2. c. 22. n. 22. 48. sect. 5. num. 408. et punct. 4. n. 404. according to what is most commonly held, namely that after the sentence it is certainly held; but before the sentence, because before the sentence no right accrues to the fisc for a penalty which is due only after the sentence; or because at least thus generally this right of the fisc regarding penalties is received. 584.— Question NoneII. Qui impedit alium ad consecutionem justi boni ex odio, sed sine vi aut calumnia, tenetur ad restitutionem?

There are two opinions. The first probable opinion affirms this, which the Scotus holds in the fourth question of the nineteenth distinction. Cajet. 2. 2. q. 62. art. 1., num. 403. cum 48. n. 98. item lib. 2. c. 42. n. 428. et alii apud Lugo. It is proved from lib. 2. § Idem Labco. ff. de Aqua pluv. arc., where he says: He who diverts a torrent so that it does not harm himself, and thereby it comes to pass that it harms his neighbor, cannot be made to act against the rain of water by his neighbor; unless indeed he did not do this with the intention of harming his neighbor, but only so as not to harm himself.

It is proven by reason, because an unjust soul, when conjoined with an external work, makes that same work, which without such an intention was unjust, unjust again through it. The same seems to think, D. Thom. 2. 2. qu. 62. art. 2. ad 4. where he says: To the fourth point, it should be replied that someone can prevent another from having a benefice in various ways. One way justly, it is thought, if intending the utility of the Church, he procures that a more worthy person be given something, and then he is in no way bound to restitution. Another way unjustly: perhaps, if he intends its harm, by which he is hindered through hatred or revenge, then he is not bound to restore.

And then he says that he is bound to make good the whole damage, if the Bishop was determined to give him the benefit; but if he was not determined to give it, he is bound only to estimate the expectation which that person had regarding the benefit. The second opinion, however, which is common (as they themselves state) and more probable, denies him any obligation to restitution; this is held in book 4 of Justice, chapter last, question 6 on Beneficium, decision 2, part 1, page 14, section 5, note 3. with reference also to preface chapter 7, question 4, with the answer

from Ant. à Spir. S. de restitutione caput 2., nota 213., ubi vocat sententiam veram et communem cum 8. tractatus tertius, capitulum 4., sectio 2., nota 4., quaestio 2., articulus 1., nota 5.; 3. tractatus secundus, capitulum 6., nota 1.; 2. de restitutione, caput 5., nota 559., 4. nota 408. Bonaventurae, distinguis 1, quaestio 2, paginam 12, nota 2, distinguis 278, paginam 4, libri 2, caput 1, distinguis 49, notam 27.

Cross l. 3. p. 2. num. 148. with Turretin t. 2. p. 300. The same opinion is held as certain in the sixth question, article three, verses six to the end, where they wrongly cite it for themselves, number one hundred and three; for Soto expressed it thus: To our purpose, therefore, he who uses his own right to procure for himself or a friend without violence and fraud, even if he does this out of hatred towards another and thereby transgresses charity, is not bound to any restitution. Reason, quia nemo potest obligari ad restitutionem damni, nisi damnum sit injustum, et ipse sit efficax causa illius damni, et in illud positivè influat: ad damnum autem afferendum non sufficit intentio, sed requiritur actio externa, quæ non solum sit occasio (ut esset in præsenti casu), sed etiam sit vera et efficax causa damni; nam aliàs si illud eveniat, aliunde evenit, et mère fortuitò. Wherefore, si tu hujusmodi nocumentum fortuitum proximo optabis, pcccabis quidem, vel tantùm contra charitatem, vel tantùm affectivè contra justitiam, non autem effectivè, cùm ille non habeat jus; et ideò opus externum cum pravo animo conjunctum non erit effectivè, sed tantùm affectivè, injustum, ex quo nulla orietur obligatio restitutionis.

For falsely is said to suffer an effective unjust damage that one who lacks any right to the thing deprived thereby is said to suffer effectively. Regarding the text, as opposed above, it is responded 4 when cinos, when no utility comes to you from this, whence rightly Sotus says that in such a case you do not have the right to heat water, and by heating it you sin against justice, by virtue of the law prohibiting this. On the contrary, si tu hoc facis ad tuam utilitatem, ne aqua tibi nocat, non peccas contra legem, quae negat actionem vicino; semper etiamsi tu arces aquam, ne tibi noceat, etiamsi hoc facias ut noceres vicini. Nor does the doctrine of S. L. c. S. Doctor impede one from being held to restitution of damage when another is unjustly hindered from obtaining a benefice, as the Sacred Doctor expresses it, namely, either by violence or fraud.

Nec obstat, quod ibi dicat: Puta si intendat ejus novamentum, quem impedit propter odium vel vindictam. For here the Angelicus assumes an injustice whose cause is hatred: "You will do evil out of hatred," says Sotus, "not because it burdens you with restitution; but to do unjustly, namely without any right of your own, but by violating someone else's." Hence it follows that if anyone, out of hatred but without using force or fraud,

persuades a Bishop to confer a benefit upon a more worthy person than he should, even though it may seem more probable, both the Bishop and the persuader gravely sin; although the benefit itself is simple as we will say in l. 5, n. 93. The persuader, however, is not bound to any restitution; because he has not injured commutative justice by diverting the other from receiving a benefit for which he had no right. Thus Glossa in c. 2. de offic. cust. Soto l. 4. q. 6. art. 3.

Sylv. v. 9. q. 4. 13. de Ben. d. 2. p. 41. §. 5. n. 3. cum S. Molina et communis, item S. Thomas, Filius Compellensis de restituenda gratia c. 4. punct. 4. n. 106. (qui hoc probabile vocant n. 107., licet alibi putent oppositum probabilius in tractato de beneficio punct. 8. n. 374.). Vide docendum librum 5. num. 106. usque ad 108. However, it must be said according to the probable opinion that one is bound to restitution when someone impedes a more worthy person from receiving a greater benefit after conjunction. According to what is stated in book 5, number 109, it is not bound to restitution for him who without violence or fraud prevents the testator from leaving an inheritance to someone who has no right thereto. Mol. etc. 586. — Si vero quis occidat alium, intendens ut homicidia- tum aliene imputetur, tenendum est damnum restituere quod ex imputa- tione ille passus fuerit? See number 636. 587. — "3."

If in the aforesaid matter, to be freely conceded, anyone should induce the judge by force, fraud, or calumny not to give what would otherwise be given on account of the imputation; or if he should hinder such a person from petitioning (for any man has the right to petition) or from obtaining such thing through seizure, by means of force, fraud, calumny, or falsehood: he is. » would be held to compensation for damage by the prudent man's arbitrium, according to the certitude or probability that he otherwise would have possessed such a good, provided nevertheless that he be worthy thereof: for if he is unworthy, he is not held to restitution, except perhaps with regard to reputation, if perchance he has injured it. . 2. c. 42. d. 48. d. 435. Therefore, it is so. See Bon. l.c., n. 30, where they hold that threats and importunate prayers, especially if accompanied by harsh words, a grim countenance, or prayers as mentioned in the canon on marriage, c. 9, n. 37, would be equivalent. Note here, however, that a religious person gravely sins who advises the testator to leave his goods rather to his own monastery than to the mother church, according to Clemens 1 de Privilegio; and in this same passage there is also an excommunication.

Nevertheless, it is not bound to restore, because the Church has no right to demand: thus L. 2, c. 4, dub. 49, n. 38. Lugo disp. 48. n. 95. et Croix l. 3. p. 2. num. 74. Mol. Otherwise . ## DUBIUM V. ### To whom or to what

is it to be restored? 589 What if the creditor is uncertain? 590 Is a thing sold to poor men to be restored to the lord purchaser? 591 What is to be avoided concerning composition in debts of uncertain value? up to n. 894. 592 What about minor thefts? 593 Are certain goods to be restored to the lord or possessor? 594 Is a thief bound to restore the thing stolen with great damage to himself? 595 What if expenses exceeded the value of the thing for the mission? 596 What if you have received in good faith something not your own property? 597 Can one who employs a stolen thing give it back to the thief? 598 If someone sells an object bought in good faith, is he bound to restore the price to the purchaser? 599 What is to be avoided concerning treasures found? 600 Can the finder of a lost thing keep it for himself? 601 What is to be avoided concerning things captured by hunting? 602 What if someone hunts in confined places? 603 What kind of hunting belongs to an old cleric and religion?

Response. Attention must be given to the nature of justice; and if any damage is caused, what reparation, and what laws shall prevail commonly. See ### Under which resolution: 589. — “1.”. When goods that are to be restored, or any debts whatsoever which are uncertain, namely, when you do not know to whom they are due, or cannot go to pay them, or when you have been entrusted with them; then, if you have these goods without guilt, so that, if you discover the rightful owner, you may restore them to him—## Cap. 2.

Dub. 5. On restitution. • If by error you have received two ells of cloth for one, and already if he has departed, and you do not know whither he has gone, it is advisable to apply some diligence in seeking: after which, if there be no hope of knowing the owner, it is probable that you would not give them to the poor (although many, according to St. Thomas, hold this opinion) (whose opinion they call common, point 14, §3, n. 214). But see no. 603.) "and it is • more pious and practically advisable to be recommended); but you may retain it, as Peter Navarrus teaches in his work, which follows: l. 2, c. 14, dub. 7, n. 48, where he says that this is safe • in practice." » (With the exceptions ibid. n. 213 of debts due for usury or simony taken from texts at the end of this number). • If however you have them as a result of a crime, such as theft, usury, etc., you must restore them to the poor, or to the Church, hospital, etc., because then restitution should be made in a better manner, so that even if it does not profit the body of the Lord, it may profit His soul, since when expended on the poor.

Thus commonly Doctors; as you will see among. It is asked: I. How should restitution be made if the lord of the thing is uncertain? It must be distinguished and seen whether the thing received was by good faith or

bad faith. If by malâ fide, then again it must be distinguished: whether the lord of the thing is unknown to him merely in particular, namely, if he knew that the thing pertains to one of three or four men in a certain place, but does not know to whom particularly it pertains; then restitution cannot be made to the poor, but the thing must be divided between those among whom the fraud exists; thus Sylv. tom. 3. in 2. 2. q. 62. art. 5. . 2. cap. 14. n. 32. they say the same thing.

Caj. Or else the Lord is unknown in general, so that it cannot be discerned to which inhabitants of a place the thing belongs: and then restitution should be made to the poor, as is stated in cap. Cum tu, de usuris, where it is commanded usurers to make restitution to the Lord or to his heirs, or if they have no heirs, to the poor. It suffices, however, that restitution be made to the poor of any place. It is sufficient as well that it be done in pious places, as commonly taught in 2. c. 14 n. 33 n. 33 punct. 14 § 3 n. 216.

Cross lib. 3. p. 2. n. 94. 4. q. 3. p. 4. n. 5. with Azor, Mol. P. etc. Tamen placeat hoc loco, dummodo diligentia debita adhibita sit, ut inventi fuerint proprii domini; nam si restitutio pauperibus ante diligentiam adhibitam fieret, et deinde compararent dominii, ipsis esset resarcendum damnum. Furthermore, this place has its merit when those defrauded are fewer in number, namely three or four, so that if restitution is made indiscriminately to any such individuals, it will not similarly come into the hands of their own lords; and therefore restitution can then be made to the poor of any such place according to the common opinion of Sylv. Restitution q. 3.

Bonaventura, loco citato, n. 40, et idem dicunt, n. 215, cum Soto, Rebell., et Tapia; et quamvis Sylvius in loco supra citato dicit congruentius esse ut eo casu restitutio fiat pauperibus illius loci ubi furtum patratum est, addit tamen id non esse necessarium. Si autem plures et vari domini incerti alicujus communitatis damno affecti fuerint, tunc omnino restitutio facienda est pauperibus ejusdem communitatis laesae. See what is said, n. 595. 590. – It is asked, II. If after due diligence had been employed to find the lord, the thing having been delivered to the poor, and afterwards the lord appears, whether it should be restored to him?

They deny paragraph three, page two, number ninety-five, likewise concerning restitution chapter three, number one hundred four. Because, since due diligence is presupposed, the poor man or pious place absolutely acquires ownership of the thing. It is said when due diligences are premises; for otherwise it is certain among all that a thing belonging to the lord must be restored to him, because then there could be no reason why

the dominion could be transferred to the poor, since in that case the lord would be reasonably unwilling. More commonly however, III, tr., IV, c., V, n. 24, 42, c. 2, punct. 9, § 3, n. 86, un., p. 49, n. 7, c. 14, n. 43, c. n. 143 et Croix loc. cit. cum Ratio ut ait.

But this reason does not seem fitting, for if the dominion of the thing has truly been transferred, no restitution should be due, whether the thing exists or not. Therefore, it is more fitting to distinguish this from Lugo concerning just. d. 24, n. 102, according to what we shall say more fully about the inventor of the lost thing in inf. n. 603, with the same [authority]. Lug. (qui n. 95 supra citato sibi non cohæret): quando, spectatis omnibus circumstantiis, non est amplius possibile quod dominus inventari possit, tunc pauper acquirit rei absolutum dominium sine ullo onere restitutionis. When however, after diligent search, there remains some hope of finding the owner of the thing, then the poor person does not acquire its ownership, and consequently ought to keep it for the owner and restore it if he appears; Lugo adds ibidem from the very manifestation of the owner that at such a time generally it can be argued that the requisite circumstances were not present for irrevocably transferring ownership to the poor.

But see entirely otherwise dicta n. 603. However, they rightly receive n. 143 and Wiganclt tr. 8 from 3 num. 50, unless the pauper or a pious place has already prescribed it according to good faith, because then the dominium is truly irrevocably acquired by virtue of prescription. 591. — It should be noted that on these matters, which are subject to doubt, a composition can well be made through the Bull of Cruciate, which is referred to in . de bull. Cruciatæ c. 48. pro regnis Hispaniis et Sardiniae et Siciliae, et pro omnibus aliis particularibus, quibus bulla communicatur. This composition can also be made through the Holy Penitentiary, but if it is obtained from itself, it is constituted by Blessed [authority].

XIV. In sua bulla Pastor Bonus, ut restitutio fiat, cim poterit commode fieri, in his locis, ubi furtum factum est. Whether, however, such a composition be valid, made without a sufficient cause? They affirm that. Turribus 24. num. 95.

But Mol. and others commonly deny this thereupon. However, it is more accurate to distinguish this from Lugo, and to say that it holds true if restoration should be made solely by ecclesiastical law, for example, through ill-gotten ecclesiastical fruits; otherwise, if restoration is due elsewhere. Reason for the first, because the Pontiff validly dispenses in his own law; reason for the second, because the Pontiff is not the lord and master with regard to debts from other sources. Whether, however, the

Pope can do this for the common spiritual good?

See Lugo n. 96. and see question number sequence 592. — It is asked, however, whether, after composition has been made, the debtor is bound to anything if the lord subsequently appears in court? Others say that he is bound to restore that in which he became richer. Thus, c. §. 5. n. 9. and precedent c. 3. q. 26. Reason, because it is not presumed that the Pontiff wished to deprive himself of his goods.

Others, however, say that he is bound to nothing, as stated in point 14, §3, n. 217, with Decree 21, n. 98, and as has always been and should be preceded by due diligence. Reason, because the Pontiff, as administrator of temporal goods, insofar as he regards the spiritual good, then transfers dominion through composition for the sake of public benefit. It is noted however, c. n. 3., that such a composition can also be made by a Bishop, although this has been reserved to no one by any law, and it appears to be according to the will of the creditors for the good of his own soul. But they more truly contradict Veriùs and Mol., since by reason of supreme power in changing the wills of lords, when this pertains solely to the apostolic seat, according to Clemens.

Because it happens that in relation to the lord where it is said: Because it happens, those things which are destined for a certain use through almsgiving by faithful ones should be directed to him and not to another (save with the authority of the Apostolic See). But as regards ultimate wills, see below n. 934. 593. — This composition is also commonly conceded for fruits ecclesiastically obtained wrongly. Cross n. 416. They also say Escoo, lib. 37. c. 42. n. 7. 8. tr. 3. c. 4. §. 3. n. 49. item tr. 4. res. 46., that composition can be made even for small thefts committed by those who sell wine, oil, etc. to citizens. But it must be held contrary to Croix lib. 3. p. 2. n. 417. because such restitution must absolutely be made to the same citizens who have been defrauded.

See to be explained later num. 595. 594. — Whether, however, when the creditor is known but so far removed as to render it possible to dispense with the matter for the poor, then a composition may lawfully be made at that time? They affirm Turr. Covarr. But it seems more probable against Soto; and yet those who have obtained composition are bound to attribute the main relaxation to other creditors of the deceased testator?

Mol. affirms; but Luco denies d. 20. n. 12., and agrees with Croix n. 419, that if the concession was made to him, not as heir, but as a person of such kind. But otherwise, if it was done to him by virtue of the power that the

testator had. 595. — “2. He who has caused damage through many small thefts, for example, of oil, bread, wine, etc., to many citizens; it is said that he should be made to restore this damage, not to the poor, but to those very citizens (by selling a smaller quantity starting from then on, or using a larger measure, until equality is reached); they say that it is probable that this can give something to the poor, especially to those of the same city. Therefore others say, as Escobar does, in book 3, chapter 42, note 71.

Anact. de septimo praecepto de decima die quintae decadi n. 20; item S. Thoma in IV. That restitution can be made to the poor for such kinds of thefts committed by public vendors; whereas it is a general rule that debts uncertain should be restored to the poor, as was established in c. Eum tu, de usur, concerning the usurer who had defrauded many with uncertain losses. They nevertheless point out that restitution must be made to poor people from the same place, because, since the community of that place has been injured, the damage must be restored; unless (as is excluded in 1 q. 3 p. 4 n. 40) the damage was suffered by a few uncertain individuals, for then he says restitution can be made to poor people from another place: and this opinion c. non audet dicere improbabilem propter auctoritatem B. Thomas.

Others, whose opinion I think should be recommended as the most common, say that such restitution, so far as it is possible to effect it, ought to be made to the citizens of the same place where the fraud was committed. Reason, because, when there exists damage suffered and somehow known, to those extent that it is possible, damage should be compensated. Thus. 3. part. 1. chap. 40. n. 2. Concinnity of volume 7, d. 2, cap. 43, n. 40 and n. 147, when common as Croix asserts in l. 3, p. 2, n. 417; c. Tumb. l. 8, tr. 3, c. 1, § 5, n. 49, punct. 41, § 3, n. 215, with Dict. 534, that such sellers are not bound to make a grave restitution to the citizens; for they satisfy their grave obligation by restoring to the poor.

Wherefore they are also excused from venial sin, if they restore to the poor, provided some reasonable cause intervenes; namely, if they cannot restore to the citizens without some notable unusual inconvenience, or if necessity presses for the restoration of those very indigent poor whom it is presumed were not unwilling to have their goods restored. And thus I find that he understood even part 3, cap. 3, art. 4, sect. 2, quor. 4, who speaking significantly of the tavern-keeper who defrauded the community, says: Then, since you truly stole what you cannot restore to each one either because they are unaware, or because it is difficult to make restitution which would not require more than trifling resources, or because there is a danger of scandal, whether through the parish priest, who knows the need of his own people, or otherwise among the poor

whom you have impoverished, you will take care that this be diffused in their place, or in some other work useful to that same place. 596. — « 3. When goods are certain, they ought ordinarily to be restored to the just possessor to whom they were accepted, or to whom damage was inflicted; even though the immediate lord is not he. Wherefore, what has been received from a depositor, borrower, carrier, custodian, administrator, should not be restored to the master, but to those themselves, because an injury would otherwise be done to them if they were deprived of possession, custody, guardianship, or utility by right; and damage and loss of profit ought to be compensated.

When goods are certain, they ought ordinarily to be restored to the just possessor to whom they were accepted, or to him who suffered damage thereby; even though he is not the immediate lord. However, it is excepted well, 4. If there is no interest in these, as if without their damage, infamy, or lordship they were restored. If I should probably think that the goods would be either absorbed or taken away with injury to the lord; in what way are the goods of the Church, not to be dissipated by a prelate, but rather to be restored to the chapter, to be thus returned?

Item those accepted from the son and family, butterfly, furious one, wife, religious; if they be from those goods whose administration does not competently belong to them, they are mostly to be restored to the father, guardian, husband, prelate. Thus also, if goods belonging to someone have been published and devoted: then, indeed, the deposited and similar debts should be rendered to the fisco. » 5. When anyone, having neglected diligence which ought to have been shown towards his lord from whom restitution was due, distributes something to the poor without such diligence, he has not satisfied his lord when he subsequently appears before him: similarly, if diligence had been shown first.

See . 2. e. 14. dub. 3. 597. — When indeed the lord is known, but something cannot be sent to him without expense, then if the thing received has been ill-received, he is bound to make restitution by incurring expenses of his own; but if he has received it well, then only the expenses of the lord are to be restored. When it cannot be sent in any way, it is to be expected for a time. If as yet there is no hope, it is considered an uncertain debt. . 5. c. 24.

598. — Is it asked whether a thief is bound to restore the thing taken with any kind of damage? The first opinion affirms, according to Cajetan 2:2:62, art. 5, and Vasquez 20, n. 184. Reason, because the lord ought to be restored whole and entire, even at the expense of the thief's damage, which is attributable to his malice. The second sentiment, however, which

is most common and more probable, denies; they hold this [position] according to 1. qu. 5. p. 1. n. 5. 594. — Whether, however, dispensation be granted to the poor. 20. n. 12. as to the heir, but statis, quam te. 595. — « 2.

"damnum in." but to themselves ci. until the coming. To be a proof, it is demanded.

Others also, according to d. 5, n. 20, apud : is the genus casu de u: When you, pauper, dammum n. 10. says restit tentiam / B. Thom suadenda test, faci tio, quia, trium fieri cap. 40. 3. n. 417 C. 3. n. 417 C. 3. n. 417 « 3. » what measure of damage is assessed « 3. "« 3."

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» « 3. » « 3. » « 3. » « 3.

» « 3. They commonly say with the second opinion, as above related, himself Lug. c. and Bon. with Sayr. and 599. — • 7. When someone has received an alien thing from a possessor of good faith, thinking that it is his own, but it is not such, and if some just contract intervenes, such as deposit, loan, pledge, etc., he is to restore it to those to whom it belongs, not to the lord, who nevertheless will be admonished out of charity, if it is thought that this will profit him without causing greater injury to another, in infamy. Vasquez l. 4. q. 2.

If however it has been received otherwise, then it ought to be restored to its true lord, provided you know him and that it can be done without inconvenience. 600. — 8. When one has bought from a thief or some other fraudulent seller either goods in good faith or bad faith; he is bound to restore the stolen thing to its rightful owner and not to the thief. Thus commonly L. 10. c. 5. n. 40. 5. c. 17. In the second book, second title, fourth chapter, third section, doubt number two, they commonly think probabilistically that the thief might be restored to his price, because he did not place the thing in a worse state than it was before; and consequently he himself does not cause damage to the master.

That (see the aforementioned points n. 569 and 570); they admit with this limitation: if soon thereafter, and not after a long time, the contract is rescinded, or if he certainly knows that the thing will be restored to the master, or if the master of the thing is dead or absent, so that it cannot be

delivered. That if, however, the purchaser is unable to recover his price from the seller, he is bound to render it to the lord and to impute damage to himself. That is to say, if one knowingly purchases an item as his own, intending to restore it to its true owner upon discovery, then if he acquires it at a low price, the lord will be bound to refund him, since he has conducted his business profitably: but otherwise, if the price was nearly equal to the value of the thing: for in that case it suffices to refund only so much as seems just to a prudent man, by redeeming the item usefully for the lord. c. c. 14. dub. 3. If you have purchased goods in good faith, for example a horse from another person, etc.

Peter, and you have sold it to a third party, for example. Shortly thereafter, and later it will be known that it is John's; and so repeating from John, Paul repeats the price to you; he considers this to be probable according to t. 8. r. 68., not binding you to give it back to Paul (if you have been accused in no way); but sufficient if you extinguish your action against Peter with him. But Sotus, in Salon. . 2., more correctly teaches that you are liable to be sued by Paul to rescind the contract and to restore the price: both because you have sold a defective thing, and also because you are liable concerning the eviction of the purchaser, and you cannot remit him to someone with whom he has no business connection. That is, if nevertheless Paulus, when able, does not restore to you the horse but to Joannis, and himself impedes this, in what manner can your price be recovered, nor do you have the right to return to him the price which you yourself accepted?

Bon. d. 31. 356 Lib. 4. Treatise 5. On the seventh commandment of the decalogue. Book 2. Chapter 15. Question 8. Article 50.

Mol. tom. 3. d. 752. n. 5. Fill. tr. 32. c. 4. qu. 8. n. 144. punct. 10. n. 195. cum l. c. n. 185. cum Scoto Gabr. etc. cum communi ut asserit Croix l. 3. p. 2. n. 368. Reason, because justice, since it is a virtue and prudently commands that equality be maintained, cannot obligate to restore anything whatsoever in the case of any grievous damage to the debtor; which would be against charity, and another Lord would be irrationally compelled. If however a thing individuated could not be sent to the lord except with such great damage, the thief can and must sell it, and transmit the price to the lord, as say Lugo n. 489. and Croix n. 370.

In casu autem, quo creditor simile damnum vel parumper minus passurus sit, tenetur omnino debitor ei satisfacere, ut communiter ajunt n. 23. 8. tr. 4. c. 4. §. 8. n. 4. cum qui dicit in hoc attendendum non solùm damnum emergens creditoris, sed etiam lucrum cessans. However, Lugo himself in n. 488 and Croix in n. 373 rightly observe that it can happen that a loss of

ten coins for an impoverished debtor is far greater than a loss of one hundred for a wealthy creditor; and thus vice versa. But, ceteris paribus, there is a difficulty in determining what measure of damage should be assigned, so that the debtor may be excused from making restitution to the creditor? And in this distinction: si sit spes ut res vel pretium ali tempore restituatur domino vel ejus haeredibus sine magno damno debitoris tunc probabiliter dicunt Bon. l.c. Lugo n. 494 n. 50 restitutionem posse differri.

Si vero talis spes desit, ut dominus esset re privandus; et tunc probabiliter dicunt c. et (qui id non reprobat cum Lugo n. 484.) quod si res parvi sit momenti, et damnum furis esset duplo majus, tunc posset restitutio applicari pauperibus, vel operibus piis;quia in hoc praesumitur dominus assentiri. If however the thing were of great moment, Sylvester and Petsch., as quoted by Croix l.c. et 677., excuse the thief from restoring immediately to the lord in the case where the expenses to be made would be equivalent to the value of the thing. But this is commonly not admitted. c. n. 6. . 4. c. 3. n. 162. et Croix n. 368. cum Lugo, Vasq. et Ills. They, however, excuse Scotus, Gabr., and if the expenses had been greater than owed.

The gloss on this proposition is also in the chapter Cum tu, de usur., where it is said that a thief is not to be considered as having sent the thing back to its lord if the expenses of deportation exceed the value of the thing itself. However, Probabilis and Molinae, loc. cit., excuse only in the case where expenses would be far greater; whereas Lugo, n. 490, obliges the thief even if he will incur a damage twice as great. When however the damage would be altogether excessive, it suffices to restore it to the poor, as commonly they say with the second sentence, as above related, ipse Lug. c. et Bon. cum Sayr. et Will. apud 599. — • 7. When anyone has received a thing belonging to another from the possessor of good faith, thinking that it is his own, and it is not so; and if any just contract intervenes, such as deposit, loan, pledge, etc., he shall restore it to those to whom it is due, not to the owner, who nevertheless will be admonished out of charity, if it is thought that this will profit him, without causing greater injury to another, infamy, and so on.

Vasquez l. 4. q. 2. If however it has been received otherwise, then it ought to be restored to its true lord, provided you know him and that it can be done without inconvenience. 600. — 8. When one in good faith has bought from a thief or an unjust seller either goods stolen or bona fide goods; he is bound to restore the stolen thing to its rightful owner, and not to the thief. Thus commonly l. 40. c. 5. n. 40. . 5. c. 47.

In the second book, second title, fourth chapter, third section, doubt

number two, they commonly think probabilistically that the thief might be restored to his price, because he did not place the thing in a worse state than it was before; and consequently he himself does not cause damage to the master. That (see what is said in notes 569 and 570.) They admit with this limitation according to book 7, chapter 14, decision 4: if soon thereafter, and not after a long time, the contract is rescinded, or if he certainly knows that the thing will be restored to the master, or if the master of the thing is dead or absent, in such a way that it cannot be agreed upon. That if, however, he is unable to recover his price from the seller, he is bound to render it to the master and to assign damage to himself. That is to say, if one knowingly purchases a thing as his own, intending to restore it to the lord when discovered, then if he buys it for a small price, the lord will be bound to refund it to him, since he has conducted his business advantageously: but otherwise, if the price was nearly equal to the value of the thing; for in that case it suffices to refund only as much as seems just to a prudent man, so that the lord may redeem it usefully. . c. c. 14. dub. 3.. 3. r. 5. i04. — » If you have bona fide purchased an alien thing, for example, a horse from another person,.

Peter, and you are sold to a third party, for example. A little while later, and then John will be known, and when he repeats this to Paul, let Paul repeat the price from you, esteeming it a probable thing; yet do not demand that Paul return it to you (if you have been accused in no way); but suffice it if you cede to him your claim which you hold in Peter. The True Sotus, Salon. . 4. p. 2. more correctly teach: to be held when demanding the rescission of the contract and the restitution of the price: both because you have sold a defective thing, and because you are holding back from the purchaser, and thus not referring him back to him with whom he has no business. That is why, if nevertheless Law, when it can, does not restore to you the just thing but to John, and itself consumes it, how will you be able to recover your price, nor do you have the right to return the rope that you yourself received.

Boniface I, Decretals, lib. 1, dist. 31. If therefore the lord shall夺权 See to be explained below under number 800. If however the thing is not recovered, no obligation is imposed upon the seller to make restitution, as they say in note 88.

He is not bound (as n. 30 says) to warn the lord or indicate to the purchaser that said thing is alienated, if after a bona fide sale, the seller rescinds it and cannot thereafter recover the price with which he himself purchased it; because, since he no longer has that thing, nor is there any cause by which the lord is deprived of his property, he is not bound to take great trouble to ensure that the lord recovers his own thing. 602. —

"You ask concerning treasures and other things found, which are held as derelict objects?" Resp. Quæres, cui restituendi, sive dandi sint thesauri, et alia inventa, quæ habentur pro derelictis? When they belong to no one, by natural law and that of nations they become the property of the first occupant. However, it can nevertheless be ordered otherwise by custom and laws to be observed.

Of whom it is said almost nothing. 2. c. 5. d. 40. . 3. t. 4. c. 5. Regarding the laws concerning treasures (4) I. That the treasure, if found in its proper place, belongs to the finder. II.

If in a foreign place, but found by chance, half belongs to the finder and half to the owner of the place; and for this reason the finder is bound in conscience to give half to the owner even before the judgment of the judge; the reason being that positive law could dispose of this matter despite the law of nature, for the common good. Thus in Just. et Jur. c. 2, punct. 8, § 3, n. 93, with reference to Lugo, etc.: although some may seem to doubt this. If however a treasure is found in an alien place through industry, without chance, and unaware by the lord: then it was decreed by L. unic. de thes. that the whole be returned to the lord of the place. But, because this law is penal, it does not oblige unless after the pronouncement of judgment, as they say in . and other cited authorities.

But that part which pertains to the lord of the place, if the place has a useful dominion and a direct dominion, is to be divided among them; nevertheless, nothing is owed to the usufructuary. Palm. et Reb. d. l. n. 97. III. If a treasure is found in a public place or a sacred one, it is to be divided between the finder and the fisc, or the prelate. q. 2. art. 2. n. 3. IV.

If however it is found through magical art, the whole should be applied to the fiscus: this law equally, as stated in Chapter 2: Doubt 5. On restitution. They say that a share should not be obligated, except after the sentence; n. 94. m Lugdunensis. And even still after the sentence, they hold that the innocent lord of the estate should not be deprived of his part in such a case, they consider it fitting to conclude. But otherwise our royal laws dispose concerning treasures found. Si igitur in publico loco et per alienam artem inveniuntur, tunc omnium spectat applicatio ad fiscum: si vero in privato loco et casu inveniantur, tunc pars tertia spectat ad fiscum, pars tertia ad inventorem, et pars tertia ad dominum fundi.

But see elsewhere at c. 603. — It is asked whether the inventor of a lost thing, when the owner has not been found, can retain it for himself? (4) There are three opinions. The first opinion affirms that, provided the

inventor has employed due diligence to find the owner. They hold thus: Sot. l. 5. de just. qu. 3. a. 3. ad 2. . 4. de n. 75. tr. 47. resol. 5. Therefore, the word.

Treasury, n. 4. item Mercad. . etc. ap. Cross book 3. number 89. And they call it probable. 2. chapter 14. note 48. Lugo concerning justice, day 6, section 42, number 439.

Holzmann. p. 4. de just. num. 59. . 42. cap. 2. punct. 9. §. 2. num. 84. Cross loc. cit., cum Vasquez. Malder. M. d. Salas, Henr.

Rodr. et al. very probable calls it. Third treatise, fourth chapter, fifth note, twenty-fourth. Reason, because, having the Lord not found after all (as it was said) diligence employed, the thing is reckoned to be lacking to the Lord, and hence it comes about that the first occupant becomes owner. The second opinion is considered much more common, holding that the inventor of the thing cannot apply it to himself, but ought to bestow it for pious use. This is held more probative by Palaus d. un. p. 4. n. 4. in summa.

Larceny, c. 85. with Tap. and Reb., because it is presumed that the will of the lord is, that if he himself cannot go to seek the lost thing, at least it may be redeemed for his soul. The third opinion, more true and to be followed, which 6.104 and more fully n. 440 and 54 and Croix l. 3.2. n. 89 distinguishes, says: When after diligence the lord has still not been found, then the thing or its price should be kept; for neither of these two can be kept, the thing itself must entirely be given to pious use according to the presumed will of the lord, who no longer retains any part of that thing, always and the thing can ever return into his hands. And conside, quando res, consideratis circumstantiis longitudinis temporis, vel antiae loci, vel quòd res non possit amplius à domino pro sua gnosci, ut accidit in nummis ordinariis, non videtur possibile, ut ad illam redeat; tunc illa fit nullius, et ideo acquiritur a primo occuente, qui illam non tenet dare juxta voluntatem prioris domini, cum impossibilitate eam recuperandi jus domini prorsus amiserit. And thus he does not explicitly hold St. Thomas 2-2, q. 66, art. 5, ad 2, where he says: refer the notes previously placed to n. 492 and 505.

And similarly, if (the things) are held to be abandoned, and this is believed by the inventor, even though he retains them for himself, he does not commit theft. The reason a priori is that the law of nations grants private dominion over things not for another purpose than that they may be used by them; hence, when it is impossible to reach their use, those things, as if

abandoned, escape the ownership of no one and revert to the original natural right, and thus the first occupant acquires them without any obligation. 604. — "You ask about what is justly prohibited through pursuit and which should be restored to whom? (4)" Resp. That is to be estimated partly according to the law of nature, partly according to custom and laws and particular treaties, as you can see in c. l. 3. t. 4. c. 5. n. 14. et d. 9. et Sav. Hunting.

Those by which this case is resolved: "The unjust hunter is bound at least to restore the damage which he causes in the fields and fruits." Regarding the hunt, inquire: Whether an animal or bird has been wounded by one person and captured by another, to whom does it belong? Hex l. Natural, §. That which concerns acquisition of dominion over things, pertains to the capable person, because many times a wounded beast is not captured.

By what reason is it said that mollis et; but if however there is a doubt, it must be divided. Thus c. 5. n. 12. Question 2. to whom belongs the bird which has set a trap for one and another captures it. More probable is it with Mol.

Therefore, on the contrary, it is said that it pertains to the snare setter who certainly would have captured the bird. Note that the law, which prohibits hunting, allows only kings to bear it, and others to whom such a right has been granted as a privilege by the king. loc. 605. — Question None: whether hunters offend mortally when they hunt in places reserved by the king, and are bound to make restitution? They affirm 14 and n. 44, and say that they should be required to restore to the king not the captured animals themselves, but their value according to the hope which the king had of capturing them. Diana tamen cum n. 614. v. 5. 6. n. 159. cum Quod etiam admittit . (1) Ex cod. civ.

Article 715 is clear, the right to hunt and fish being determined by special laws. It is lawful for anyone to hunt; however, generally speaking, it is not lawful without legal permission commonly called port d'armes, nor in another’s field without that person’s reasonable consent at least presumed, nor outside the time set by the prefect, even in one’s own fields, unless they are surrounded by walls or only use snares or nets to repel foreign pests which one has properly cleaned. It is not lawful to fish with nets in navigable rivers; however, it is lawful with a line and projectile. In unnavigable waters the right to fish pertains solely to those whose properties adjoin such waters.

In every seas fishing is permitted, provided that special nets as determined

by statute are employed. Edit. Chapter 2. Dub. 5. On restitution. n. 44. If the damage is not notable, since wild animals are not of great value nor are there many of them, then he says to accept the prohibition as having been made according to common judgment merely under a venial sin.

But he adds thereupon with Molina that hunters can always be excused from restitution when a penalty is imposed, because they seem to have in mind only that at such times. — Ques. 4. Whether hunting is prohibited to ecclesiastical persons? Thus C. 4 states regarding a clerical hunter: The dogs or hawks of bishops, priests, or deacons may be used for hunting; but if such persons have frequently indulged in this pleasure, if the bishop is involved, they shall be excluded from communion for three months; if the priest, for two months; and if the deacon, suspended from all office. In what state 4. that the said prohibition be commonly understood by DD. of a noisome and clamorous nation with loud noise, as c. 2. punct. §. 2. n. 64. et l. n. 15. with Abb. and other canonists. Trinitas tamen sessio 24. c. 42. circa finem generalius loquitur: Ab ictisque venationibus, aucupiis, etc., abstineat.

It is to be voted that even clamorous hunting is not forbidden under a grave impediment if it be frequent; for so the cited text states and moreover is scandalous or involves great expense. Thus in the sixth section, sixth chapter, fifty-first article, and at the same place in the chapter Idem tenet, proce. n. 45, and Mol. apud Lug. ibid., and Caj. Abailard et Salvator, apud .. 45., qui dicunt: ex sola causa venationis, nisi aliud adjunctum sit, esse de facili clericum damnandum peccati mortalis. Reason, as they say, such a hunt by itself is a serious disorder, and this is argued from what has been mentioned above where a penalty of suspension to be endured is imposed, and today such a suspension is attested not to be in use.

But if so, namely, when. Therefore, the learned Neoplatonic author of the book, whose title is found in the nov.-conf., states that a hunt not clamorous is altogether licit for recreation; but a clamorous one, according to the younger opinion, is not of itself a sin against canon law, unless there be contempt or contumacy. Moreover, a clamorous hunt is forbidden to religious persons by Clemens 1. § Porrò t. monach. But to those, with the scandal removed, he says. And this they admit: n. 64, if twice or thrice, and without great noise let it be done. He says that it would be more fitting to make restitution to the poor of that place where the theft occurred; yet he adds that this is not necessary.

Si autem plures et varii domini incerti alicujus communitatis damno affecti fuerint, tunc omnino restitutio facienda est pauperibus ejusdem

communitatis laesa. See no. 595. 590. — It is asked II. If after employing due diligence to find the lord, the thing having been delivered to the poor people, and afterwards the lord appears, whether it should be restored to him? They deny paragraph three, page two, number ninety-five, likewise concerning restitution chapter three, number one hundred four.

Because, when due diligence has been exercised, the poor man or a pious place acquires the dominion over the thing absolutely. It is said when due diligences are preceded; for otherwise it is certain among all that a thing which belongs to the lord should be restored to him, because then no reason could exist by which dominion could be transferred to the poor, since in that case the lord would have been reasonably unwilling. More commonly however, 3. part. 4. cap. 5. num. 24. 42. cap. 2. punct. 9. §. 3. num. 86. un. p. 19. num. 7. 2. cap. 14. num. 43. cap. n. 143, et Croix loc. cit., cum Ratio, ut ait. But this reason does not seem fitting, for if the true dominion of the thing has been transferred, no restitution would be due, whether the thing exists or not.

Therefore, it is better to distinguish this from Lugo concerning just. d. 21, n. 102, according to what will be more fully said infra, n. 603, with the same author. Lug. (who in n. 95 supra cited does not agree with himself): when, considering all circumstances, it is no longer possible that the lord be found, then the poor man acquires absolute dominion over the thing, without any burden of restitution. When however, after diligent search, there remains some hope of finding the owner of the thing, then the poor person does not acquire its ownership, and consequently ought to keep it for the owner and restore it if he appears; and Lugo adds ibidem from the very manifestation of the Lord that it is commonly argued in such cases that the requisite circumstances were not present to irrevocably transfer ownership to the poor. But see entirely otherwise dicta n. 603.

However, correctly are received n. 143 and Wiganett r. 8 ex 3 num. 50 nisi pauper aut locus pius bona fide rem jam praescripserit quia virtute praescriptionis tunc dominium irrevocabile vere acquirit. 591 — Notandum quod super his debitis incertis bene potest fieri compositio per bullam Cruciatae quae refertur ap de bull. Cruciatae c. 48. for the kingdoms of Spain, Sardinia, and Sicily, and for all other particulars to which the bull is communicated. This composition can also be made through the Holy See, but if obtained from it, it is constituted by Benedict. XIV. In sua bulla Pastor Bonus, ut restitutio fiat, cim poterit commode fieri, in his locis, ubi furtum factum est.

Whether, however, such a composition be valid, made without a sufficient cause? They affirm that. Turribus 21. num. 95. But Mol. and others

commonly deny this thereupon.

However, it is more accurate to distinguish this from Lugo, and to say that it holds true if restoration should be made solely by ecclesiastical law, for example, through goods unlawfully obtained; otherwise, if restoration is due elsewhere. Reason for the first, because the Pontiff validly dispenses in his own law; reason for the second, because the Pontiff is not the lord and master with regard to debts from other sources. Whether, however, the Pope can do this for the common spiritual good? See Lugo n. 96. and see question number sequence 592. — It is asked, however, whether, after composition has been made, the debtor is bound to anything if the lord subsequently appears in court?

They say that he is held to have "established himself in what he is accused of." Thus it is said; chapter 5, note 9, and precedent chapter 3, question 26. Reason: The Pope is not presumed to have wished to deprive himself of his affairs. Rather, they say that he is not bound to do nothing, as stated in point 1, section 3, number 217, with decision 21.98 and chapter semper et praemissa requiring due diligence. Reasoning: The Pontiff, as administrator of temporal goods, insofar as he looks to the spiritual good, then transfers dominion through composition for the sake of the public good.

It is noted however, c. n. 3., that such a composition can also be made for the sake of the purpose itself, although this has been reserved to no one by any law, and it seems to be in accordance with the will of the creditors for the good of their souls. But it is more consonant with truth and Molina that, since there is no reason of supreme power to change the jurisdictions of the lords, since this pertains solely to the Apostolic See according to Clemens. Because it happens in relation to the dominion where it is said: Because it should be converted to him to whom they are destined for a certain use through largition, and not to another (save by the authority of the Apostolic See). But as regards the last wills, see below n. 931. 3. — This composition is also commonly conceded for fruits ecclesiastically received.

Cross n. 416. They also say Escoo, lib. 37, c. 12, 8, tr. 3, c. 4, § 3, n. 19; item tr. 4, res. 46: that composition can be made even for trifles, committed by those who sell wine, oil, etc., to citizens; this is not opposed to Croix lib. 3, p. 2, n. 417. Therefore, complete restitution must be made to the same citizens who have been defrauded. Vida cenda num. 595. 594. — An vero, si creditor fit notus, sed tam longè absit, ut res pauperibus dispensari possit, fieri tunc valeat compositio? They affirm Turr.

They affirm. But it seems more probable to oppose Soto; and this is because composition is conceded only when the creditor is uncertain. But those heirs who have obtained composition are bound to assign the relaxed sum to other creditors specified by their testator? Mol. affirms; but Luro denies d. 20. n. 12., and agrees with Croix n. 419., if the concession was made to him not as heir, but as a certain person.

Accordingly, however, if it was given to him by virtue of the power which the testator had. 595. — « 2. He who has caused damage through many small thefts, for example, of oil, bread, wine, etc., to many citizens; him they say should be held responsible for restoring it, not to the poor, but to those very citizens (by selling a smaller quantity starting from then on, or using a larger measure, until equality is reached); they say that this may possibly give something to the poor, especially of his own city. Therefore others say, as Escobar. §. 3. c. 42. n. 71. Anac. de T. praec. d. 5. n. 20. item S. Th. in IV.

Sent. d. 45. q. 4. a. 5. tr. 4. v. 46. quod pro hujusmodi furtulis, commissis à venditoribus publicis, restitutio potest fieri pauperibus; cum regula sit generalis, debita incerta pauperibus esse restituenda, ut in simili casu de usurario, qui pluribus incertis defraudavit, sanctium est in c. Eum tu, de usur. They nevertheless point out that restitution must be made to poor people from the same place, because, since the community of that place has been injured, the damage must be restored; unless (as is excluded in 4. q. 3. p. 4. n. 40.) the damage was suffered by some few uncertain individuals, for then he says restitution can be made to poor people from another place: and this opinion c. non audet dicere improbabilem propter auctoritatem B. Thomas. Others, whose opinion I consider as the most common to state, say that such restitution, so far as it is possible to effect it, should be made to the citizens of the same place where the fraud was committed.

Reason, because, when there exists damage suffered and in some way known, to that extent damage should be compensated. Chapter 3, Title 4, Book 4, Article 40, Note 2. Concerning the matter of Tom. 7, d. 2, cap. 43, n. 40, n. 147, as Croix asserts in l. 3, p. 2, n. 417: "cum tamen tumbrum l. 8, tr. 3, c. 4, § 5, n. 49, punct. 44, § 3, n. 215," according to the Decretum 834, such vendors are not bound to restore damages to the citizens; for they have satisfied their grave obligation by restoring to the poor. Therefore, they are also excused from venial sin if, by reason of some reasonable cause, they restore to the poor, and it is thought, if they cannot restore to the citizens without some notable inconvenience, or if necessity presses for the restoration of those very indigent poor whom they do not

presume to be unwilling to have their goods restored.

And thus I find that he has understood even part 3, cap. 3, art. 4, sect. 2, quor. 4, who speaking significantly of the usurer, who defrauded the community, says: Then, if you are unable to restore individually what you truly stole, either because it is unknown or because the execution is difficult and would be a loss for trifling matters, or because there is danger of infamy, you will see to it that this be diffused among the poor of your place whom you have impoverished, or in some other work useful to that same place. 596. — • 3. When goods are certain, they ought to be ordinarily restored to the just possessor to whom they were accepted, or to him who suffered damage; even though he is not the immediate lord. Wherefore, what has been received from a depositor, borrower, assistant, custodian, administrator, should not be restored to the lord, but to these very parties themselves, because an injury would otherwise be done to them if they were deprived of possession, custody, guardianship, or utility; and damage and lost profit ought to be compensated. When goods are certain, they ought ordinarily to be restored to the just possessor to whom they were accepted, or to him who suffered damage thereby; even though he is not the immediate lord.

However, it is excepted from this, 4. If there is no interest in these matters, as when restitution is made without damage to their honor, infamy, or lord. If it were preposterously believed that we would consider the thing to be taken away or wiped out with injury to the lord; in what way should the goods of the Church, not to a dissipator prelate, but rather to the chapter itself, be restored? Item those accepted from the son and daughter, from the wife in a furious manner, from the religious; if they be from those goods over whose administration they have no competence, they are mostly to be restored to the father, the tutor, the husband, or the prelate.

Thus also if goods of someone are published and dedicated to the fisc: for then the deposit and similar debts should be rendered to the fisc. 5. When anyone, having neglected diligence which should have been exercised towards his lord to whom restitution was due, distributes something to the poor without such diligence, he has not satisfied the lord afterwards seeking recompense: similarly, if diligence be preceded by negligence. See essence 1, 2, and 44, doubt 3, question 97. – “6.

When the lady is known, but cannot be sent anything lest it involve expense, then if the matter has been poorly received, she is bound to make up for her own expenses; but if it has been well received, then only the lord's expenses are to be restored. When it cannot be sent in any way, it is to be kept for a time. If as yet there is no hope, it is considered uncertain

wax. . 5. c. 24. It is asked whether a thief is bound to restore the thing taken along with any other damage done?

The utmost opinion affirms it, when Caj. 2. 2. qu. 62. art. 5. ao Vasq. Cov. Arm. Sto. among Lugo concerning justice cap. 20 num. 184. Reason, because it ought to be preserved indemnified, even when there is damage from turis, which should be imputed to itself: but the common and more probable opinion denies this; namely, that 1. qu. 5. p. 4. n. 5. l. 2. c. 45. dub. 8. n. 50.

Mol. tom. 3. d. 752. n. 5. Fill. tr. 32. c. 4. qu. 8. n. 144. punct. 10. n. 195. cum l.c. n. 485. cum Scoto Gabr. etc. cum communi ut asserit Croix l. 3. p. 2. n. 368. Reason, because justice, since it is a virtue and prudently prescribes that equality be maintained, cannot obligate to restore anything whatsoever in the case of any grievous damage to the debtor; which would be against charity, and another Lord would be irrationally compelled. If however a thing individuated could not be sent to the lord except with such great damage, the thief can and must sell it, and transmit the price to the lord, as Lugo says n. 489, and Croix n. 370.

In casu autem, quo creditor simile damnum vel parumper minus passurus sit, tenetur omnino debitor ei satisfacere, ut communiter ajunt n. 23. 8. tr. 4. c. 4. §. 8. n. 4. cum qui dicit in hoc attendendum non solùm damnum emergens creditoris, sed etiam lucrum cessans. Nevertheless, properly do Lugo n. 488 and Croix n. 373 advertize, for it can happen that a damage of ten coins in respect to an impoverished debtor is far greater than a damage of one hundred in respect to a wealthy creditor; and thus vice versa. But, ceteris paribus, there is a difficulty in determining what measure of damage should be assigned, so that the debtor may be excused from making restitution to the creditor? And in this distinction: si sit spes ut res vel pretium ali tempore restituatur domino vel ejus haeredibus sine magno damno debitoris tunc probabiliter dicunt Bon. l.c. Lugo n. 494 n. 50 restitutionem posse differri.

Si vero talis spes desit, ita ut dominus esset re privandus; et tunc probabiliter dicunt c. et (qui id non reprobat cum Lugo n. 484.) quod si res parvi sit momenti, et damnum furis esset duplo majus, tunc posset restitutio applicari pauperibus, vel operibus piis;quia in hoc praesumitur dominus assentiri. If however the thing were of great moment, Sylvester and Petsch., as quoted by Croix l.c. et 677., excuse the thief from restoring it immediately to the lord in the case where the expenses to be incurred would be equivalent to the value of the thing. But this is commonly not admitted. c. n. 6. . 4. c. 3. n. 162. et Croix n. 368. cum Lugo, Vasq. et Ills. They, however, excuse Scotus, Gabr., and if the expenses had been greater

than owed.

The gloss on this proposition is also in the chapter Cum tu, de usur., where it is said that a thief is not to be considered as having sent the thing back to its lord if the expenses of deportation exceed the value of the thing itself. However, Probabilis and Molinae, loc. cit., excuse only in the case where expenses would be far greater; whereas Lugo, n. 490, obliges the thief even if he will incur a damage twice as great. When however the damage would be altogether excessive, it suffices to restore it to the poor, as firmly they say in the second sentence, as above related, ipse Lug. r. l. c. et Bon. cum Sayr. et .)9. — « 7. When anyone has received an alien thing from a possessor of good faith, while he is walking, considering it as his own, although it is not so, if anything intervenes which constitutes a just contract, such as a deposit, loan, pledge, etc., the title belongs to him, not to the lord; yet he who will admonish him out of charity is thought to profit him without causing greater injury to another, infa- a.

Vasq. l. 4. q. 2. If however it has been accepted otherwise, then it must be restored to its rightful owner if you know him and it can be done without injury. When one has bought from a thief or an unjust seller either goods or services in good faith; he is bound to restore the stolen thing to its rightful owner, and not to the thief. Thus firmly L. 40. C. 5. n. 40. 5. C. 47. lo. .

When it comes to theft, whether from a cunning seller who has sold something either with or without good faith; the stolen thing is held to be restored to its lord, not to the thief. Mal. in 2. 2. tit. 4. c. 3. dub. 2. probabiliter sentiunt se reddi furi ut ab eo pretium suum recuperet quia non constituit i pejore loco quàm antè fuerat et consequenter ipse non infert ino damnum. That which is stated in nos. 569 and 570: They admit this with this limitation; namely, if soon afterwards or after a long time the contract be rescinded, or if he certainly knows that it will be returned to the lord, or if the lord of the thing shall have died, or so that there can be no meeting. That if, however, he cannot recover his price from the seller, he is bound to restore it to the master and to impute the damage to himself.

That is to say, if one knowingly purchases a thing as stolen, and then upon its discovery returns it to the rightful owner, then if he purchased it for a very low price, the owner will be permitted to refund him that amount, since he has conducted his business advantageously: but if the price was nearly equal to the value of the thing, then it is sufficient merely to refer the matter to the judgment of a prudent man, giving as much as seems just for the benefit of the owner in redeeming the thing. . c. c. 44. dub. 3. r. 5..

— If you have purchased an animal, say a horse, honestly from another person: and it is sold to a third party, say to Peter. A little later, and then John is known, and repeating this to Paul, Paul may repeat the price from you; he will indeed have a probable reason for it. T. 8. R. 68., not wishing to be held as giving it back (if you have become no richer in any way); but it will suffice if you cut down your own wood which you have in Petram and give it to him. But Sotus, Salon. . p. 2. more correctly teach that you are bound to annul the contract at your request and to restore the price: both because you have sold a defective thing, and because you are entitled to rescind on account of eviction from the purchaser; nor should you remit this to him with whom you have no business connection. That is, if nevertheless he is able to restore it to you and not to John, and himself says this very thing, by what means can your price be recovered, nor do you have a claim to restore that which you yourself accepted?

Good... d. 34. If therefore the lord shall夺权 See to be explained below under number 800. If however the thing is not recovered, no obligation is imposed upon the seller to make restitution, as they say in note 88.

He is not bound (as n. 30 says) to warn the lord or indicate to the purchaser that said thing is alienated, if after a bona fide sale, the seller rescinds it and cannot thereafter recover the price with which he himself purchased it; because, since he no longer has that thing, nor is there any cause by which the lord is deprived of his property, he is not bound to take great trouble to ensure that the lord recovers his own thing. 602. — "You ask concerning treasures and other things found, which are held as derelict objects?" Resp. Quæres, cui restituendi, sive dandi sint thesauri, et alia inventa, quæ habentur pro derelictis? When they belong to no one, by natural law and that of nations they become the property of the first occupant. However, it can nevertheless be ordered otherwise by custom and laws to be observed.

Of which life. II. c. V. d. XL. III. t. IV. c. V. Regarding the laws concerning treasures (4) I. That the treasure, if found in its proper place, may belong to the finder. II.

If in a foreign place, but found by chance, half belongs to the finder and half to the owner of the place; and for this reason the finder is bound in conscience to give half to the owner even before the judgment of the judge; the reason being that positive law could dispose of this matter despite the law of nature, for the common good. Thus in Just. et Jur. c. 2, punct. 8, § 3, n. 93, with reference to Lugo, etc.: although some may seem to doubt this. If however a treasure is discovered in an alien place through industry and without the knowledge of the lord: then it was decreed by L.

unic. de thes. that the whole must be returned to the lord of the place. But, because this law is penal, it does not oblige unless after the judgment, as they say with [and others cited].

But that part which pertains to the lord of the place, if the place has a useful dominion and a direct dominion, is to be divided among them; nevertheless, nothing is owed to the usufructuary. Palm. et Reb. d. l. n. 97. III. If a treasure is found in a public place or a sacred one, it is to be divided between the finder and the fisc, or the prelate. q. 2. art. 2. n. 3. IV.

If however it is found through magical art, the whole should be applied to the fiscus: this law, like the nalem, they say does not obligate, unless after a sentence. But they dispose the laws of our kingdom concerning treasures found. If, however, they are found in a public place and by means other than their own, then the whole applies to the fisc: if, on the other hand, they are found in a private place and by chance, then one-third goes to the fisc, one-third to the inventor, and one-third to the lord of the land. See other authorities at c. 03. — It is asked whether the inventor of a lost thing, when the owner has not been found, may retain it for himself? (1) There are three opinions. The first opinion affirms that, provided the inventor has used due diligence to find the owner. They hold thus: Soto, Lib. 5, De Donis, quaest. 3, art. 3, ad 2; ibid., dist. 4, cap. n. 75, 17, resol. 5.

Therefore, the sentence is affirmed provided that the inventor has employed due diligence in seeking out the owner. Treasury, n. 4. item Mercad. . num. 89. And they call it probable. 2. 14. n. 48. Lugo de justitia, librum VI, sectio 42., numerus 439., caput 42., punctum 9., pars secunda, numerus 84., x loco citato cum Vasquez.

Male deer. M. d. Salas, lib. 3. tract. 4. cap. 5. n. 24. Reasoning is considered by the very common opinion to be the inventor of the thing unable to apply it to himself, but rather obliged to impart it for pious use. He holds this for the prior, Palaus d. un. p. 49. n. 4. in m. v.

Larceny, c. 85, with Tap. et Reb., because it is presumed that the will of the lord is such that if he himself cannot restore the lost thing, at least it should be redeemed for his soul. The more probable and to-be-followed opinion distinguishes this, as do 6.4 and more fully n. 140 and 54 and Croix l. 3, n. 89: it says that when after diligent search the lord is still not found, then the thing or its price should be preserved; but if it cannot be preserved, the thing or its price must entirely be redeemed for pious uses, according to the presumed will of the lord who still retains the right thereto, so that the thing may always and ever return into his hands. And

con-, quando res, spectatis circumstantiis longitudinis temporis, vel itiae loci, vel eò quòd res non possit amplius à domino pro sua nosci, ut accidit in nummis ordinariis, non videtur possibile, ut ad ium redeat; tunc illa fit nullius, et ideò acquiritur à primo occu-, qui illam non tenetur dare juxta voluntatem prioris domini, cùm possibilitate eam recuperandi jus domini prorsùs amiserit. And likewise this [position] St. Thomas firmly holds in II-II, 66, 5, ad 2, where he says: And similarly if (the goods) are considered as abandoned, and this is what the inventor believes, even though he retains them for himself, he does not commit theft. The reason a priori is because the law of nations grants private dominion over things solely for the purpose that they may be used by those individuals; hence, when it becomes impossible to bring the thing to their use, it, as if abandoned, escapes the status of belonging to no one and returns to the original natural right, and thus belongs to the first occupier without any obligation. 604. — "You ask about things that are justly prohibited by capture, and to whom they should be restored? (4)" Resp.

That is to be estimated partly according to the law of nature, partly according to custom and laws and particular treaties, as you can see in c. l. 3. t. 4. c. 5. n. 14. et d. 9. et Sav. Hunting. Hereby is resolved this case: "An unjust hunter is bound at least to restore the damage which he causes to the crops and fruits." Regarding the pursuit, inquire chapter 4: whether an animal or a bird that has been wounded by one hunter and captured by another belongs to the latter? From L.

Natural, §. Those laws concerning the acquisition of dominion over things, pertain to the capable person, because many times a wounded beast is not captured. From what reason? Mollis et; but if there is however a doubt, it must be divided. Thus c. 5. n. 42. Question 2. to whom pertains the bird which has set one snare and which is caught by another.

More probable is it with Mol. Therefore, on the contrary, it is said that it pertains to the snare setter who certainly would have captured the bird. Note that the law, which prohibits hunting, allows only kings to bear it, and hunters, to whom the king has granted such a privilege as an exemption, to do so. . loc. 605. — Question None: whether hunters, while hunting in places reserved by the king, commit a mortal sin and are bound to make restitution? They affirm, 14 and n. 44, and say that they should be required to restore to the king not the captured animals themselves, but their value according to the hope which the king had of capturing them.

Diana tamen cum n. 614. v. 5. 6. n. 159. cum Quod etiam admittit . (1) Ex cod. civ. Article 715 is clear, the right to hunt and fish being determined by special laws. It is lawful for anyone to hunt; however, in general it is

not lawful without legal permission commonly called port d'armes, nor on another's land without that person's at least reasonable consent preliminarily assumed, nor outside the time set by the prefect, even in one’s own lands, unless they are surrounded by a wall or only nets are used or to repel foreign weeds which one has washed away. It is not lawful to fish with nets in navigable rivers; however, it is lawful with a line and projectile.

In unnavigable waters the right to fish pertains solely to those whose properties adjoin such waters. In every seas fishing is permitted, provided that special nets as determined by statute are employed. Edit. Chapter 2. Dub. 5.

On restitution... if the damage is not notable, since wild animals are not of great value and there are many of them, then he says to accept the prohibition out of common judgment, made merely under a venial sin. But he adds there with Molina that hunters can be excused from restitution when a penalty is imposed, and then they seem to intend only that. Question 4: Whether hunting is prohibited to ecclesiastical persons? From c. 4.: a hunter thus is held to be: an episcopos, presbyter, or diaconus, or accipiter, or such like, should not engage in hunting; for if any person of these ranks has frequently indulged in this pleasure, if he is an episcopus, let him be excluded from communion for three months; if a presbyter, for two months; and if a diaconus, let him be suspended from all office. In quo dum 4. quod hanc prohibitionem communiter intelligant DD. de Ione clamorosa cum strepitu, ut c. 2. punct. 2. n. 64. et l. n. 15. cum Abb. et aliis canonistis.

However, session 24, chapter 42, speaks more generally at the end: Let him abstain from these hunting, trapping, etc. And furthermore, that clamorous hunting is not prohibited under a grave and frequent scandal, or to the detriment of expenses, as is evident from the cited text and moreover with scandalmongering. Thus in the sixth section and chapter six, the same opinion is held by Proc. 15, and Mol. at Lyon in the same place, and Cajetan. From this, Aquinas and al-Sa'di say, according to 5 [of that which] they say: Except for an additional reason, hunting can easily be considered a mortal sin. Reason, as they say, is that hunting itself constitutes a grave disorder, and this is evidenced by the very aforementioned [passage], where a penalty of suspension to be endured is imposed, and today such a suspension is attested to not being in use.

But rather, at that time. Therefore, the learned Neoplatonic author of the book, whose title (per li nov..conf.), states that a venatione not clamorosam is altogether licitum ad honorem recreationem; but

clamorosam, according to the lesser opinion, non esse de se peccatum secundum canones nisi adsit contemptus aut contumacia. Moreover: a clamorosa venatio est vetata religiosis Clem. 1. § Porrò: monach. But to those, with the scandal removed, he says. And this they admit: if twice or thrice, and without great noise, let it be done.

DOUBT VI. OF THINGS WHICH SHOULD BE RESTORED? ARTICLE ONE. What should be restored by one inflicting material injury, or by a possessor in good faith? Why is the possessor in good faith bound to this? What if he has received from a thief who is capable of restitution? See other cases. What fruits are bound to restore the possessor in good faith? What if he has received a mixed thing along with the goods of the thief? What if, by that acquisition, he himself became incapable of restitution? What if someone owns two properties in the sea, each of which he thought was worth ten gold coins, but one is actually worth a hundred?

Book 4. Question 4. Article 4. Treatise 3. Title 2. Chapter 2. Wherefore it is resolved. « 4. If you have worn a garment given to you in good faith by a thief or another person, and it has been nearly ruined, and afterwards the owner appears, you should either keep it, or restore an equal one to him, and besides that, make amends for whatever damage it has sustained; if on the other hand you have lost it, or it has been taken from you, etc., in such a case you are not responsible, Bon. l.c. 4. See » lib. 7. cap. 14. dub. 4.

If however the thing which you lawfully received from a thief (whether by donation or purchase) is consumable by use, and you have mixed it with your own possessions so that it cannot be distinguished; even though you subsequently discover that the thief was acting bona fide, you are not bound to restore it. Sayr. d. 4, q. 3, p. 4, because through this lawful mixing ownership has been transferred in good faith, as is gathered from the law. If foreign coins. » de solut. There is no reason why this part rather than that part should be deemed (1) The new right transfers to the possessor of good faith all the fruits, whether existing or consumed, of the property, although it was thereby made richer.

In the civil code provisions: Article 549. The simple possessor does not gather the fruits thereof unless he possess in good faith: but if good faith has departed, he is bound to restore the thing together with its fruits to the claimant. Art. 550. A possessor bona fide est dum possidet tamquam proprietarius virtute aliqui tituli translativi domini, cujus vitia ignorat: unde et perit obligatio realis, et tantum manet personalis ad venditorem.

See Dianae p. 4, tract. 4, relatio 66, caput 7, de causis 41, distingui 3, enuntiatio l., capitulum 20, distinctio 18, ubi addit, esse valde probabile et

jurisperito conformem, quod verus dominus rei illius ablatae et permixtae, quamdiu totus cumulus extat, retineat jus in re, ut ex illo cumulo satisfaciat ante alios imo possit ex eo occulte accipere. It must be understood that in such a case one is always to restore what one was accused of taking, even if it be unjustly; no one can be excused from this with the loss of another's property. See i. Bon. d. loco n. 5. who suppose this to be certain.

But what is stated in n. 498 and 499.38 — Bann. de restit. c. 1, punct. 3., n. 45, at the end, is that he who receives a consumed thing, for example, good money stolen by a thief, is not bound to return it even if the thief has the power to restore it, because money obtained through theft is subject to restitution equally with the stolen goods, and since the master does not have the right to demand the specific species of money from the thief. But this opinion does not seem probable, since the reason is not established; for the lord never loses his right to his own money in kind, since there is no greater reason in things consumable by use. 19. — « 2. Soldiers, who in good faith were fighting, having afterwards understood the injustice of the war, should restore only so much from the spoils as made them richer. The soldiers, in good faith fighting, having afterwards understood the injustice of the war, should restore only so much as they still possess from the spoils, by which they became richer.

He who, in good faith and through the ignorant accusation, celebrated against him who was then recognized as a usurer, is bound no more than to that by which he became richer. See III. tract II. cap. III. § 4. A possessor in good faith is bound to restore something according to his inclination, if through due diligence he incline towards that which is not his own; this teaches Con. d. 3. d. 40. n. 39. At d. 2. p. 2. n.: putat, cum ad nihil teneri, quia possessor, contrariis rationibus non convincentibus, praeponderat.

The same is taught in 2. c. 3. n. 154. Dian ap. 4. t. 3. n. 24. et 26. If he has neglected to urge the truth, and subsequently it cannot be known, he says » (See what is said 146. 1. n. 37.) 5. Si bona fide rem vendideris dono tibi datam, teneris restitutus etiam quia factus es locupletior, et satis debet esse tibi, non habe te minus quam ante.

And if nevertheless there be a matter with another, he is bound to restore it. t6. et 5. 2. Mol. . 2. c. 14. d. 3. i. If in good faith you yourself have disposed of the thing and sold it without profit, nothing is to be restored to you, but only to him among whom the thing remains. Mol. l. c. 2. 14. id. 4. contra Vaug. etc. 7.

If you have bona fide given away a thing that is another's, so that you would not give another if you had not lacked it, you are under no obligation; because you were not made richer thereby; otherwise, if you had been about to give another (for then, by sparing yours, you would have become richer); or if you had received something in recompense. Bonac. . 7. c. 44. d. 4. » 8.

If you have gained profit from another's thing as an instrument, for example, if you have sold a foreign grain transported by someone else: or if you have exposed alien money to negotiation, you are not bound to restore that profit; because it is not the fruit of the alien thing, but your own gain through industry: such fruits are called the fruits of industry, which nature itself in no way produces, but only contributes as an instrument of the operator. . c. n. 3. From St. Thomas, etc., 640. — 9. All fruits of things, whether they be merely natural, that is, which scarcely require any human labor, such as the fetus of animals, trees, herbs, and grasses; or whether they be simultaneous industrial, or mixed, that is, to which human labor contributes equally or more than nature, such as, for example, grains grown by sowing: likewise wine, oil, wool, etc., to which also are referred the prices of the hire of slaves, yokes, etc., which are called civil fruits: these, I say, if they have been received and remain extant, ought to be restored to the lord, deducting however his own expenses and the valuation of labor. » But see below note 825.

» v. But rather, where we will say with Molina, La Croix, and the common opinion, that the fruit of a mixed possession from the owner, whether of good faith or bad faith, should not be restored except insofar as it responds to nature, not however insofar as it responds to industry. And indeed, the price of the lease from alien property ought to be restored to the lord, even though he would not have held that thing if it had been within his own possession. See c. [Whether it is fitting to restore the price of a book borrowed from someone?] Denies.

But it is more correctly held against the opposite view as stated in P. Concil. tom. 7, pag. 110, n. 3, punct. 3, §. 4, n. 70, who quote Lugo and Prado: And they say similarly concerning vestments, a golden torque, a horse, and similar items, because although they are not apt for producing fruits, they are nevertheless per se locables. "If however," the real goods possessed bona fide during the time prescribed by law have been," to acquire them (for which if there is a title, it is two years between present persons, four years between absent persons; but if there be no title, thirty years with good faith), they are not to be restored: because acquisition transfers dominion." Chapel. 7. c. 44. d. 3. "(Thus Lugo and others commonly hold; see what was said in note 547." As regards prescription

and its requisites, see what has been extensively discussed in this fourth book, from note 504. 644. — « 40.

If you have received goods that are consumable by use (whether through good faith or bad faith), such as wine, oil, wheat, mixed with the things properly belonging to the thief in such a way that they cannot be distinguished, you should not demand restitution if the thief is able to make restitution, because the thief, through the mixture, acquired dominion over those goods along with his own property, and thus he himself became their true lord and could transfer them. Navarrus, Book 7, Chapter 44, Decretum 3. See Diana p. 2. tr. 5. misc. 40. Thus also say Salmanticensis ibid., c. 4, punct. 3, § 4, num. cum 12: But what if you have received from a thief an already mixed thing with his s, and through your reception of it the thief became incapacitated to restore?

Sporer from 7th precept, n. 250, and §4, n. ajunt probabile esse, quod dicunt: etc., ad nihil teneri tamen qui accipit rem a debitore non solvendo, quia debitor dat suam, et damnum per accidens creditoribus obvenit: quapropter, debitor per illam commixtionem, quæ æquivalet consumptioni, acquisierit totale dominium cumuli, ut dicunt Lugo de just. d. 6. 72. Sanchez Dec. lib. 4. c. 23. n. 34. et et . cit. quod donatarius possit rem i accipere, et retinêre. But this opinion is obstructed first by that which the same authorities teach probabiliter in 2 cap. 40 n. 457 and Salt. de contract. cap. 3 punct. 42 n. 410 cum vers. Notandum contra Lugo, quà sententià posità: donatarius, rem permixtam accipiens, semper teneretur ad restitutionem, quia non acciperet rem donantis, sed alienam.

But more it hinders the senate, which we think to be less true, and we refer to note 722 against this. Here we say in the case of a person who has received a mixed thing from a donor, that he is always bound to restore the thing, because he does not receive the donor's thing, but an alien one. Hence we say in the case where the recipient is held to return to the Lord the mixed thing. 3. — Here it is asked, for what reason he is bound who has cast a lump into the sea thinking that it was worth ten gold pieces, if those were really worth a hundred? The stricter opinion says that he is bound to make good the hundredfold loss, because by mortal sin he is held responsible for all damage caused, even though he did not know. Thus Lugo in Just. d. 8, n. 63. Pallavicini et n. 194. et aliqui docti juniorum cunda sententia tamen, quam sequuntur P. Usserius in cursu Theol. d. 52. qu. 2. Conclusion 2. n. 6.

Crox l. c. 4. d. 4. q. 3. c. 3. q. 5. Scattered. 4. Diana p. 14. tr. 2. r. 34. et alii docti juniores dicit: eum tamen ad decem modò invincibiliter credat, gemmam non pluris; » et ne in confuso quidem dubitet de ejus reali valore;

quia non tur volitum damnum illud, quod non est cognitum; ideò quoad 360: Lib. 4. Treatise 5. on the seventh commandment of the Decalogue. That excess lacks the will to cause damage.

And this opinion seems to me sufficiently probable; for, proceeding from the principles, I say that according to all, theological guilt is required for restitution; and such is the guilt as it is invincibly apprehended. So that he who inflicts damage upon his neighbor may sin more or less according to how much or little he estimates the damage to be. Moreover, the joined fault: the obligation of restitution should correspond thereto. If therefore the fault be only for ten, the obligation of restitution cannot be for a hundred; for by the same reason he who apprehends invincibly something to be worth less than its true value is not bound to restore according to his own estimation, when a graver injury is lacking: for it is an axiom common among philosophers that as one thing simply stands in relation to another simple thing, so more stands in relation to more.

Nor does it hinder to say that the one who causes damage is bound to make good all the harm caused; for this must be understood so that the said damage has been somehow, at least in a confused or noticed manner, as commonly happens otherwise; not however, if it was completely invincibly unknown, as Croix says in his dictum number 194. Mazzotta: loc. cit. c. 2. num. 4. et P. 2. n. 592. punct. 9. §. 4. num. 418. et 424. ## ARTICULUS. IL What must be restored by the inferrer, an apparent injury, or damage to faith maligner, or possessor. 611. To what is the possessor bound with regard to goods damaged in faith? Regarding the solution of gabelle disputes.

It is asked F. Who can be entrusted with the imposition? Question. II.

By what is required for the attribution of justice: imposition? 616 Inquiry. III. Those who fraudulently exact the tithe, sin, and are bound: to restoration? Question is raised IV.

Whether those who bring subjects to fulfill the impost for their own use are bound to release it? And concerning the poor? 617 Inquiry is made. V. Is it considered just to decide in favor of the people in doubt? They must be bound by its resolution.

Inquire. VI. Whether a creditor of the King can, by fraud, evade the tax imposed on another or on something leased to another? What.

VII. Would all deserve to be held by the fraudulent tax? Can the lord retain

useful expenses incurred almost certainly for his affairs? And whether a thief is bound to make good all damages, at least confusedly beforehand? What is the value of the thing stolen according to the law? And what if the thing which would have caused greater harm to the lord perishes among the thief? And what if someone kills another's sheep, which later would have been worth more? And what if the thief consumes a sheep of greater value at a time when the master would have named it as his own in the course of the year? And what if someone pretends to be poor? And what if someone consumes another's property out of extreme necessity? And what if he consumes a thing that has been condemned to punishment? i. — R esp.

According to what has been previously stated, it should be estimated both according to the quantity, namely that which belongs to another and that damage which is unjustly inflicted; to him an equivalent ought to be given, unless some other damage is presumed from the mind of the damager and by mutual reasonable consent. Wherefore the solution: If the damaged party has a right in the thing wherein he has suffered damage, indemnification should be made to him solidarily; but if he has only a right to the thing according to its quantity, indemnification should be made proportionate to his right, considering the circumstances, because the full value of the thing is not due, which was expected; for the right is in hope and can be impeded in many ways. Who in a public place: his own city's law against just prohibition. If wood or branches fall down, he is not bound to restitution, unless he grievously offend the common good, for example, by cutting roots or laying trees across buildings: because it is reasonably presumed that the intent of the republic does not prohibit the use of public places more strictly than necessary in order to avoid a case where such offenses might be discovered. See what is said in n. 529. 4.) Nevertheless, gravitating by reason of sin, they are bound to restitution if anyone remains in the place: of a private individual; even though this is sometimes presumed for all masters, since many do not intend that restitution be made when discovered, and so they incur penalties. He who comes to hunt or fish in places: alienated, or otherwise; there if those places are (merely) enclosed or carefully watched over, he is not mortally culpable, nor held to restitution, according to . 9. res. 39. contra (See dict. num. 605.) Although it may be probable and in the private field one should hold that there is another way of sinning: through fraudulent steps and such things arising an obligation of restitution; yet altogether not: improbably this is understood, because the sequel interprets it as not being the intention of the law to oblige anyone else but those who are caught to be mulcted.

See. Sapientia. Gabriela, p. 4. n. 5. in Navan. i. . d. 9. res. 48. . 3. t. 3. c. 8.

n. 4. et. 5. video etiam t. 46. ras. 38. et p. 2. r. 38. ubi ex Cajet. gr. panis, cannibus, piscibus, nudo, oteo, etc. » Concerning this matter of tributes, many questions need to be elucidated. 615. — Question NoneI.

Who can impose taxes? Resp. can impose taxes, namely emperors, kings, republics, and all other supreme princes possessing highest power. Concilia etiam Pontifex possunt ex potestate indirecta disponendi de temporalibus, quando id opus est ad regimen spirituale; ita communiter 2. cap. 33. n. 42. Question Noned. 666.

Lugo de just. d. 36. n. 3. et 4. Even those to whom is imparted the primary power of governance and at the same time expressly this faculty of imposing tribute, can do so, as Lugo n. 6 and lib. 2 cap. 4 dub. 3. Cities and communities subject thereto can also at times impose contributions, whether called assessments, for the governance, if the prince at least does not contradict, thereby appearing to tacitly consent: Lugo n. 8. Debeantur autem tributa à principi infideli negotiantibus vel transeuntibus à christianis?

Resp. debentur, si justo titulo ille regnum possidet; secùs si injusto, nisi praecedat pactum de aliquo tributo sol- vendo; . c. d. 5. et Communissimè autem docent Molina loc. cit. . 2. num. 14. Lugo n. 14. dub. 4. cum Sylo. Panorm. It is asked.

What are the conditions required for the imposition of a just tax? The first condition is justice as a cause, which is not indeed abundance or the utility of the prince, but the necessity of the common good to which the sustenance of the prince according to his dignity also properly pertains. Hence, if the prince cannot provide by his own means for his necessity, even though he himself has brought about such a necessity through his own culpability, the subjects are still bound to contribute, as commonly taught by Molina in d. 667, n. 48, lib. 2, c. 4, dub. 2, n. 8. Lugo d. 36. cum Vasq. et aliis contra S. debere tunc principem moderari sumptus quantum fieri possit imo et resarcire damnum subditis si ad pinguiorem venerit fortunam.

Wherefore Molina properly warns in the aforementioned place that princes indeed sin when, through exceeding themselves in expenses and liberality, they expose themselves to the risk of grievously offending their subjects. The second condition is the proportion of the tribute with the necessity occurring, namely that the people are not burdened more than the good of the state requires. Hence Lugo n. 24 says: it is not possible for a prince to preserve his kingdom by so burdening the subjects with expenses for war that he reduces them to great poverty; for the kingdom is not for the sake

of the king, but the king for the sake of the kingdom; unless (he rightly objects), another prince who invades the kingdom be an infidel or heretic, such that grievous dangers to the faith of the subjects might reasonably be feared under his rule. Lessius however notes in chapter 33, number 19, and Lugo number 22, that Victoria justly allows a prince to impose a new tax upon his subjects who have rebelled against him, without other necessity, partly to compensate for the damage suffered by himself on account of the rebellion, partly as a part of the just penalty for the crime committed.

The third condition is equality in persons, namely, that if some have greater strength, they should contribute more, and those with lesser strength, less; see Lugo 23. But there is doubt whether an assize, imposed for the utility of some place, should be exacted from outsiders? They deny, however, according to doubt. 45. n. 6. But commonly and more probably they affirm thus, n. 9.

Mol. d. 669. num. 3. et Lugo n. 28. v. Secondly, since thus and with others; also because it is not apparent that there is another suitable mode of collecting tribute, otherwise foreigners would more difficultly be known by the citizens; moreover, in this way custom is preserved among peoples; for when the inhabitants of this place mingle with others, they also pay the tributes of those other places. The first opinion is most common and more probable, affirming this very thing; and it is found in the sixth chapter, fourth section, number sixty-two. Mol. d. 674.

The Cross Book 4. page 1. 669. page 420. q. 7. art. 7. n. 4. q. 4. n. 358. Diana, lib. 1, tract. 40, rel. 49, cap. 33, n. 57, cum et. Arm. Medium 36. n. 38. and 39. with Soto, v.

Gabr. from that same verse 24. Therefore, as to what belongs to Caesar, to Caesar; etc. And from verse 6 and 7. Therefore indeed tribute is rendered; for ministers of God, in this very thing serving. Render therefore to all their dues: to whom tribute, tribute; to whom custom, custom.

The second reason is proven because the king is bound to attend to the salvation of the people, the administration of justice, and other affairs; on the contrary, the people are bound by justice and according to natural law to provide tribute for the sustenance of the prince. The second opinion, however, denies this, and that view is held by the 15th and the 60th [texts or authorities]. Angel. v. Pedagium n. 6. Beja in resp. p. 4.

Case 43. ext. in comment. bull. Cænæ lib. 2. Can. 45, q. 42, n. 9: ubi fusè n

tuetur, et respondet ad contraria argumenta; et probabilem pu-. Bossius p. 4, §. 24, n. 290 et 296 cum Sayr. et Sancio, ac na l. c. cum Sa, et Malderi qui dicunt: defraudantes vectigalia non à confessariis urgendos ad restitutionem. Reason, because although subjects are bound by natural law to provide due assistance to their prince in matters pertaining to the law of nature, they are nevertheless not bound by guilt to those taxes which have been imposed with a great penalty, since it is justly presumed then that they do not wish to be obligated to guilt and punishment. For Navarrus says: "Likewise, laws which prescribe temporary penalties do not obligate in doubt to eternal punishment; as far as they are just, who prescribe the penalty." (Whose opinion is also shared by others cited in book 4, n. 147.) The obligation of subjects to pay taxes to their prince is compensated with a penalty when they defraud him thereof.

Wherefore it seems that the princes are satisfied if with such great profit to them those who defraud such dues are punished. That is what seems to be more presumable, namely, that if the solutions for exceding the necessity of the prince's gabellas certainly exceed, the subjects would solve full impositions. Moreover, as yet in the opinion (though commoner and more probable) there is not given a mixed law, namely, one that commands and imposes penance, which does not oblige to alms; nevertheless, in the present case, where there exists a law commanding that the tax and penance be paid, it orders those who do not pay to be excommunicated, acting divinely, when, although the tax has not been paid, they will not also wish to pay the penance after confiscation: this law seems conditional or disjunctive (according to what is said in book 4, chapter 5, dubium 1, note 22. with Salon). Heart.

The aforementioned opinion is still in the common and probable judgment that a mixed law does not exist, namely, which commands and almost excuses the impenitent, who would not be bound to a full payment; nevertheless, in the present case, where there exists a law commanding that the tax and fine be paid, it imposes on those who do not pay, the divine power, which then sins by fraud when, not having paid the tax, he also refuses to pay the fine after confiscation: this law seems conditional or disjunctive (according to what is said in lib. 4, cap. 5, dub. 1, n. 22. cum Salon.). That it seems more presumptuous to attribute this kind of penance, which is profitable for the king to whose benefit they yield, to such penances in these cases, than to others, which are merely afflictive. It is doubtful whether this law obliges under guilt to both, namely, to the payment: tax and penalty; or testaceous penalty, and in a doubt no one is bound by obligation. suffer the charter. But it does not hinder to say that such a fraud would be to the detriment of these very subjects who are taxed; for it is answered that the subjects are no more bound by this law

than they are bound with regard to the buyers of the taxes as regards the king selling them; and it must be imputed to themselves if they do not take care, for under such a condition they purchase the taxes, and if in one way they suffer loss, in another they gain profit on account of the penalty of the transgression.

These things may be said for the second opinion; or rather on account of these reasons (which do not seem to deserve contempt) it is itself sufficiently probable, I refer this matter to wiser men (4). For no one feels that those who pass openly and by a straight way are held to pay tolls, as a reason of passing through the gate or bridge which is imposed for the security of the roads; for it would be most burdensome to oblige strangers to know these statutes at gates or bridges. And this is probable to him . 42: even if one conceals himself or consults about prices, such taxes are so imposed that they do not owe them unless demanded. Generally however regarding all imposts, Lugo thinks: 6: 36. n. 43. with Mol. d. 674. n. 9: it is fitting to admonish the people concerning the payment of tributes, but after the fact not to compel them to restitution: if among so many imposts they reasonably think that they have paid something unjustly or have contributed sufficiently to public necessities, those who have been defrauded of their tributes shall swear IV. Whether those who bring goods are bound to pay gabels, is disputed?

And do the poor? It is lawful according to all law, that no one should be deprived of the means by which anyone earns things for his own use and for his family, as expressed in the Universal Code concerning taxes. And it is confirmed in cap. Quamquam de cenin 6: Although regularly exacting the demands of education from those condemned is permissible. Which only on matters for private use and family purposes is perhaps deemed permissible by Lug. d. 36, n. 88, in fine.

Whereby Sanchez Cons. 2. c. 4. d. 44. n. 2. states that such a burden should be borne, unless it is expressly imposed even on those for use proper, because, since it is an odious thing and contrary to common right, there needs to be express mention thereof. But hence arises a doubt, whether the vectigal solution can be induced through custom? "The contrary opinion denies this, and this view is held by Cajetanus and others." Taxes, under oath, Soto on justice, book 3, question 6, article last, verse v.

Cause, and Host. or. Table ... c. n. 4. Because (as t) it is unjust to burden the poorer ones, since these lack more: according to their own. The contrary opinion however affirms this and holds it, Lugo in Just. d. num. 71. d. 7. and when . . . Anthony less, Sylvester.

Gab. et Rosell. Because such a custom (which is like a law) would certainly not be unjust, for the poor are not burdened more than the rich; since the rich, because of their greater abundance of servants and greater lavishness in expenditures, pay more than the poor do. However, Lessius in loco citato and with Corduba, etc., as Lugo said, n. 27 and 74 ad locum, urgently require such a tax justice, and it should not be objected that those who are defrauded do not deserve it; let its justice be established. But the poor should be held to pay taxes? They say, as stated by Lugo in d. 36, 1, 69 with Bartholus and Decius, c. 33, n. 62, and also with Giganthus, Iserninus 2, etc., that if poverty were to come about in such a way that one could not himself, nor his dependents, even with moderate profit from trade, or because he has many children, debts, or other necessities, be exempted from taxes; for this is demanded by natural justice, that one should first provide for himself and his dependents, and then pay the tribute. They further add S. A., and others AA., that ministers can remit someone on account of excessive poverty; for it is presupposed that a prince can remit. 7. — This question is discussed.

Whether the people in doubt about the justice of the tribute are bound to its solution? There are many opinions, for in a negative doubt they affirm nèri. 2. cap. 33. dub. 8. n. 64. et Sotus, Palac. Malder. at Lugo on the day 36, number 86. Reason, because in doubt, this precept of the prince is to be presumed, whose authority lies in the possession of being obeyed.

But Molina denies this in paragraphs 6 and 9 of conclusion 5. Diana t. 3 tract. 3. r. 39. with Villal: Arag. 36. n. 89. and Sanchez Cons. l. 2. c. 4. dub. 6. num. 5. with S. Gabr. Med. Heart.

Arm. Shoulder. Ang. etc. Tamen putat Lugo intelligendum, si adsit aliqua praesumptio de injustitia tributi, quia tunc illud dubium non erit merum dubium, cum praesumptio fundet partem contrariam: quando enim tributum nequit judicari justum saltem probabiliter, non videtur obligandus subditus ad solutionem; in dubio enim onus probandi justitiam tributi incumbit principi, qui petit illud. Hence the aforementioned authors limit their opinion, so that it proceeds from new taxes whose beginning of cause is known: not however from old ones, whose causes are not remembered and therefore are to be presumed just; unless (as Molina says in note 6) there has always been a grave suspicion or conjecture regarding their injustice, or concerning the cessation of their cause.

The aforementioned authors approve the said second opinion from the chapter "Pervenit de censio," where it is stated: "It must be determined for what and when each census ought to be paid." Item ex c. Quamquam, de

censio. in 6. ubi: Quamquam pedagogorum exactiones regulariter merito sint damnatae, tamen tanto districtius prohiberi oportet, ne ab ecclesiasticis exigantur. You will say: The law is presumed just in a doubtful case; similarly, so is the tribute. Lugo responds n. 90: it is not the same presumption to regard a law as just in doubtful cases as it is with respect to taxes, of which many are deemed by prudent men to be unjust, because (as Molina notes d. num. 6): few speak the truth on this matter, desiring to please; and the people dare not oppose themselves, nor are they sufficiently heard.

Therefore (as Lugo subjoins), that presumption regarding the tax law is not so well-founded as to drive out doubts, since many very weighty Decrees declare that few taxes exist in which all conditions necessary for their justice actually concur. They do not say that this rule is to be obstructed, namely, that one should obey the superior precept in a doubt; for all, says Lugo in the same place, n. 90. v. You will say that they confess that it is not to be held in doubt as to obedience when a precept is excessively difficult or brings about too great damage; and thus also they teach 2. cap. 31. n. 40. et cap. 41. n. 77. in fin. Sotus from the third question, second article, conclusion two.

Cordub. lib. 3. qu. 6. et 6. cap. 3. n. 24. Cum tunc illa difficultas, una cum dubio de potestate imperandi, praeponderet possessioni superioris. They confirm the same opinion many jurists among those mentioned at number 5, such as Bartholus, Cornarius, Decius, etc., saying that since a tax is an odious thing, it should be judged that in doubt it ought not to be paid. This is in a negative doubt; as for the positive doubt, namely, when it is probable that the tax is unjust, are the subjects bound to submit to that? Affirmant Arez, Vasq. et Turr. apud Lugo d. 36. num. 91.

But common- [or] does not deny this; asserting that there is a common tendency in DD. with P. Navarr. lib. 3. c. 4. n. 263. Item 6. c. 3. n. 7. 3. tract. 3. cap. 3. n. 6. 4. 2. p. 6. n. 5. Lugo in n. 91. and Sporer in the seventh precedent chapter, fifth number, n. 154, gather together Azor, Cajetan, and many others, in Diana tom. 4. p. 4. de Parlam. r. 22. and p. 2. tr. 3. sc. r. 59. Reason, because a subject then rightly uses his right with regard to that which is not for sale, while he has probable reasons in his favor.

And to this judgment also agrees that part of the Decretum, fourth part, sixth section, number six, at the end [fateretur], confesses that it is not an obligation to obey when, at least, manifestly the command exceeds the power of the one giving it. And it is taught by D. Antoninus p. 2. n. 4. cap. 13. §. 8., where he says thus: those who dissolve an education because

they were instituted for an unjust cause (which should not be believed unless it is known probabily) do not sin, nor are they obliged to restore, according to Raymond. Whether, however, those who demand public tributes in doubt as to whether they are just sin, I discuss and treat in book two, chapter four, question seven, article two, with Navarrus. Sylv.

Caj. Ang. limitant. I Lugo with Vasq., and excuses even those who are not subject to him, whether poor or rich if they are not compelled, if they demand that a prudent king be judge: to impose taxes without the counsel of the wise. But Lugo, tit. 28, does not commit an error if it does not condemn the tax collector when there is no certainty of injustice; for it is to be presumed that taxes are just, especially in such great diversity of opinion.

It is sworn VI. A creditor of the king, if he cannot recover the debt, is not to release the toll, let it be entrusted to another? They deny that Corduba, Regi- 'd. and Graff., as stated at Lugo, d. 36, n. 72. But they commonly affirm this, cap. 33, dub. 40, lib. 2, cap. 4, dub. 48.

Molina 574. n. 40. et Diana tom. 4. p. 2. tract. 2. Misc. r. 46. cum var. Vasq. Molf.

Reason, because a greater conductor does not have more right than a king; if even the king were to unjustly demand tribute from this creditor, so too would the conductor. m dicunt n. 76 v. Accordingly, and Lugo number 82 with Sylv. P. Var. et Vega, si gabella fuerit alibi vendita. This, however, does not proceed rightly, as Lugo n. 80 says when a debt contract was made with the king, whether the gabella had been located or sold.

It is sworn on the seventh [day]. Whether an immense damage from a fraudulent tax-office should be held against itself? Sylv. affirms in Croix, book 3, part 2, note 276. But foolishly they deny [it] in chapter 2, question 4, article 42, note 3.

Lugo, day 36, book 5. Sporer from 7th precedent number 151 and Molina: solely the seller is to be discharged, who, after the sale has been made, remains obstructed in the discharge of the tax. This, however, is to be understood in such a way that all agree, namely, that the buyer does not cooperate positively in the defrauding of the tax. Furthermore, Lugo n. 65 and Sporer loc. cit. also hold that if the buyer had noticed from these frequent purchases made with fraudulent intent, leading to similar examples elsewhere, it would cause serious harm to the prince. Otherwise, a holder in due course (4) or possessor is bound not only to restore; but

also to return the thing taken away and the profits derived therefrom (excepting his own expenses), » (But excepting those).

So too 7. §. Bx diverso. ff. de acquir. dom., to the possessor in bad faith is denied the action for recovery of expenses. Hence it proves 6. d. 58. n. 35., and Lugo thinks that the opinion is sound: one can retain dominium over useful expenses incurred in the thing through force of theft. Nevertheless Lugo, Molina, Lessius, Palaus, Navarrus, Croix lib. 3. part. 2. n. 221. call the contrary opinion more probablen; for the aforesaid law obligates not by penalties unless after sentence) « and industry); but also ». resarcire re damnum emergens, et lucrum cessans, cuìm vere sit injusta » causa talùs damnorum. Even if these damages are unknown; provided they are at least anticipated, even confusedly, as Croix mentions in his third book, part two, note 198, near the end: "Hence, if the lord, having retained the thing by cultivation or commerce, would have been expected to receive a hundred florins from it and perhaps another small sum or nothing at all, he should satisfy the lord according to those hundred florins; although commonly lords usually remit much if the matter is settled."

» chapter 4. note 7. 649. — « 7. Si res aliena, dum injustè detinetur, crescat, ut si pretium ejus augeatur, damno oreseit, ac proinde id ei praetari debet. Kid. 3. t. 2, cap. 4. 620. — « 8. If alien property, while unjustly detained, perishes or deteriorates, it should be so, whether by chance, or through just hostility, or naturally; and it must be certain that it would have perished equally for the lord, he is not bound to restore the altar: because nothing new is determined concerning the lord among thieves, v. gn.

» It happens that if it would not have perished for him, then: non fuisset peritura apud (1) Ant. i. 101. Of stolen goods, as they perish by theft, so is the thief bound to restore their value. Article 1879. Whoever shall receive a movable or immovable thing against justice, is bound to restore it either in itself or in its price, if it has been lost; much more so if he maliciously intervened, and to repair damage from an accidental event.

Art. 1881. Rossueuer majus fidei exigenae rei consequendae necessaria aut utiles debuit exigere. Edit. mm. vel saltem. nonnisi per injuriam, tunc injustus detentor: tenetur ad restitutionem, licet sine culpa sua res perierat. b. tr. 2. cap. 4. n. 2. If a thing belonging to another perishes in the hands of an unjust possessor, whether it perish by reason of its own nature or because he has absorbed it, given it away, destroyed it, etc., even though it had been certain that it would be lost to the lord, nevertheless he is bound to make satisfaction for it to the lord, as is common among things of this kind, etc. » For greater clarity, one asks whether a thief is bound to restore

what has perished, which also would have perished in the same time and danger to the lord? Answer: If a thing perishes with the thief without his fault, nor at another time and risk than that in which it would have perished in the hands of the lord, then the thief is bound to restoration; for although theft was committed against him, yet it was not an effective cause of damage; for commutative justice does not bind unless the damage has actually occurred.

Thus it is found; see above, according to the common opinion, in the work "Unctuoso," section 3, paragraph 2, note 52, with Lassale's note 162: 1. 400. And it is confirmed from the law 4. ff. To the law. Rhodes et al., ubi duo navis teneri ad restituendam navigationem, qui ex una in aliam navim mercem, invito domino, transtulit, quae periit; pereunte navi in eadem tempestate.

But you will say: how is the obligation of restitution extinguished without injury from an unjust acquisition already contracted? Answer: it is extinguished by the event of that common danger whereby damage comes to the master through theft; for it is not necessary to make good a damage which does not exist, since restitution only makes good the damage. We have proven this in no. 561 from D. Thomas; nor will an injury oblige to restitution where damage did not originate without one's own fault; for if the thief has consumed the goods or lost them through his own culpable negligence before that danger occurred, then he is obliged to restitution, as they say, c. and with Molina and commonly. Although 168: and 2. e. 12. n. 93. with Vasquez and others excuse the thief from restoring the thing itself, having consumed it in the same place and within the same time as he eagerly took the thing from the lord, which being equally perishable; this is probable for use. Lugo d. 18. n. 77. because truly the thief himself is also the cause of the damage. I said: 2. without fault of another, for it is turned aside that the thief should be held to restitution, lest the thing perish with him, not by chance, but through injury of another; because this other had contracted an obligation of restitution; whence he was bound by law, the thief who had previously contracted such an obligation. Thus Etzel.

Bul. Sporer and others commonly. I said 3. at the same time; for if, after passing through that common danger, the thief does not restore the thing and later it perishes in another danger, they say n. 54. when a thief is detained for restitution, because, by not restoring, he was culpably remiss. But still, Croix, in his book 3, part 2, note 218, excuses the thief from restitution if a common danger would have equally caused the loss of the thing among the lord; for rightly does Croix say that the thief should then be held responsible on account of delay to restore the fruits which the lord

was about to receive; because the delay was the cause that the lord suffered damage to those fruits. Yet he is not bound to restore the thing, since it was not the delay but the danger that truly caused the lord to lose the thing. If anyone slays a sheep belonging to another which now is worth five denarii but later would have been worth ten, Sotus says in his book 3, part 2, note 236, that ten denarii should be restored.

But more probable. Benè tamen excipit Croix cum Lugo, nisi dominus pretio illo non possit emere similem agnum, vel quia caret pecunia, vel quia non habet amplius opportunitatem emendi; hoc tamen intelligendum, si dominus eum reservaturus fuisset ad tempus incrementi. What if the Lord had consumed the thing at a time of lesser price, but rather the thief had consumed it at a time of increment? They feel that concerning the thief, he should not be held liable except to a value less than that, both because restitution must be made according to the measure of the damage sustained by the lord; and because the sale, made at the time of increment, is a fruit of industry which does not belong to the lord: and this judgment is found in section 6, number 126, paragraph 9.

Pope Concilium tomi septimi pagina centesima sexta numeri viginti et numeri quinquaginta novem cum Sylvio. Remnant and whence, after expenses have been deducted, the whole is due to him. What if the lord had consumed the lamb at a time when it was worth more, and its value had increased among thieves, but later decreased back to its former value before him? P. Concina responds in loco citato, pag. 405, n. 24: the thief is to be held responsible for a lesser amount than the original value, because restitution does not obligate one beyond the measure of the loss incurred.

But this seems to me utterly improbable, because, when the value of the lamb increased from five to a more valuable price for the benefit of the master, and at that time the culpable thief did not restore it worthily, the damage was not in five, but in ten; and the delay of the thief was indeed the cause of this damage; therefore he should have restored not five, but ten. 622. — • 40. He who, feigning himself poor or another as being such, extorts alms, is not bound to restore if it be a small sum, which is given ostensively to mendicants; otherwise, if it be a large sum; for then this condition (if he be poor) is understood to be binding according to Molina. But according to Palam, whether it be to the giver or others besides him. See e. 2. c. 6. n. 409. 13. — 44. He who in extremis necessity consumed what had been previously borrowed, hired, or loaned on pretext, does not owe to restore it: because neither by reason of the thing received with it, nor in itself, nor in its price; nor by reason of reception, since he would have consumed it according to right; nor by reason of contract, since this does not obligate him unless your fault causes the thing to perish.

Diana page 5, treatise 8, rubric 40. Nisi forte etiam hoc ipsum, quod te eam necessitatem furatus eras et consumpsisti in ea, quia furto meo jus non ademit, quod tali re habebat. Concim. 8. contra c. r. 9. ex zor et 6. aliis, contra) 14. — Certum est autem, quod mutuatarius, qui in extrema neces rem mutuatam consumit, tenetur adhuc restituere mutuum; quia: consumit rem propriam, cum rei mutuatae transferatur dominium utuatarium. 15. — Quaeritur, ad quid teneatur emens rem alienam cum dubio, ita venditoris, et postmodum, facta diligentia, dubium evincere non it? Some say that he is bound to restore the whole thing either to one or to i from whom he doubts whether it belongs to him; or to the poor if the person is unknown. It is more probable that he be held to restore the thing according to the quality of the doubt, since on neither side does his possession begun with a doubtful faith favor him so much as to retain the whole thing for himself: on the other hand, it does not seem just to be bound to restore the whole thing when there is doubt whether the thing belongs to another.

Thus 10 d. 17. n. 80. and 84. . 2. c. 44. n. 45. . 3. punct. 3.!. n. 62. with Dic. et Villal. ## ARTICULUS III., et quid debeat restitui pro injuria illata corpori, v. gr., per mutilationem, occisionem, etc. To what extent is the killer bound? Whether one who is incapacitated for restitution in one respect is held liable in another? What if one who kills Cajus, should kill Tilius out of corruption? And whether this incurs irregularity or canonically excommunication?

What if someone were to burn down Tili's house, feeling ashamed because it belongs to Cajus? Does the forgiveness of a father killed hold good to the prejudice of his children? See other cases. To which heirs is restitution to be made?

Whether an homicide is bound to restore goods which he had given away in liberality to others whom he had killed? What, if the damage intends these things? To what is the murderer bound in regard to creditors of the one he has killed? What if the homicide is imputed to another, and this killer becomes aware of it?

What if this very thing is intended? An invariable hanged man, involved in the protection of modes, holds to what? If a process kills another, one who accepts combat? Shall the price of labor be detracted, which the slain endured for the sake of lost profit? — Resp. The unjust slayer or maimer will be held in conscience bound to restore for the harms and goods of fortune which have been directly caused by such a killing or wound, according to the prudent judgment: but strictly speaking nothing at all is

to be restored for life, member, or scar according to strictness, since they are goods of a higher order which cannot be estimated by money. Thus against Soto, lib. 2, cap. 9, dist. 23. See 3. t. 3.

627. — Is an impotent person bound to restore in one kind of honor, and if he is unable to do so otherwise, to give money as compensation for the damage, when he has killed or injured or dishonored a man, but is not bound to restore in another, inferior kind of honor? Here is the double probable opinion. The first affirms with Soto in Just. l. 4, q. 6, art. 3, ad 3. Kajet.

Sum. V. Restitution, c. 2. Item Sylvest. Market.

Arts. 11. section 1. no. 4. And for this opinion it seems that . 2. q. 42. art. 2. ad 1. where he says: When someone has taken away a limb from another, he should compensate him, either in money or in some honor. The same [authority] further repeats ibidem ad 2., speaking of the restoration of reputation: Or if he cannot restore the reputation, he should compensate otherwise. Reason, because he who cannot make full compensation is bound at least to compensate a part thereof that he can.

The second opinion, however, is more common and more probable, denying this very proposition, and those maintain it (2. c. 9. dub. 23. n. 144). Lugo loc. cit. n. 5. et disp. 15. n. 23. 3. sectio 5. tractatus 3. pars 3. caput 6. n. 2. Bonac. d. 2. q. ult. sect. 2. p. 10. n. 10. l. 4. c. 4. d. 4. n. 7. Croia 1. 3. p. 2. num. 299.

Sporer from 8 preliminary chapters chapter 6 number 127 point 6 number 80 and chapter 4 point 9 section 3 number 142 with P paragraph 140 number 7. It is proved from 1 Corinthians 4:9, where it is said that a person who has been struck while recovering from an injury will be innocent, provided that he restores both his efforts and expenses to the physicians. Therefore, it suffices to restore merely the damages incurred in goods, so that there be no obligation to restore something for the wound; otherwise (well argues Lugo), the striker would not be said to be innocent. It is proved from the law fin. ff. de his qui effud., etc., where it is said that the one who wounds is held liable for the expenses of cure and the remuneration with which the wounded person would have been cared for: but neither a cicatrix nor a deformity is estimated; because a free body receives no estimation.

3. Probatum est ratione, quia justitia commutativa obligat ad restituendum juxta aequalitalem damni. Ibi autem ubi restitutio facienda sit in genere

diverso, nulla adest aequalitas, nec ullatenus erit compensatio damni: per quamcumque penam minimè reparabitur damnum; neque in toto, neque in parte: et sic respondent opposita sententiae. However, commonly the aforementioned AA. advise that it is fitting for the confessor to impose penance upon the penitent for the penance itself, or to give something in accordance with equity to one who has been injured. « 1. Qui occidit ebrius alium, si ebrietas non fuit culpabilis, et volun- taria, vel licet fuerit talis, si tamen homicidium vel non praeviderit, vel diligentiam debitam adhibuerit ad cavendum, non tenetur ad restitutionem: tenetur autem, si praeviderit, et non caverit. Good.

2. He who kills Caius, thinking it is Titius, is bound to make restitution: because this act is an injury to Caius. » 628.— Quesitio 4. He who kills Cajum, thinking himself to be killing Titium, is bound to make restitution?

He affirms here with the common opinion. Some deny this, because with regard to Cajus homicide is merely accidentally and involuntary. Concerning this, see what is said in the following question, which agrees therewith. But here arises the doubt: whether one incurs excommunication according to the canon who, intending to kill the cleric Peter, through an invincible error kills the cleric Peter?

Denies article 4, response 31. with decree 22. octava 1. number 54. Conciliarium tomum tertium, decretum quintus, numerus tres. Et probabile vocat sextum capitulum quartum, sectionem tres, numerum viginti novem. Reason, because with respect to Paul, that blow was not voluntary, but merely casual and affective; but the sole affection of wishing to expel Peter was voluntary, yet the sole affection is insufficient for excommunication. However, they say more probab ly: lib. 9, d. 32, n. 26, with Cordova and 7th art., 1st sect., n. 7.

Bonac. de cens, d. 1. q. 2. p. 1. n. 20. um. Mol. Reb. et aliis communiter, ut fatetur ipse Ratio, via occidens clericum ideò incurrit excommunicationem, quoniam in- riam irrogat statui clericali; qui autem unum clericum pro alio per- tit, licet erret in persona, jam lædit statum clericalem, quia clericum ut lædere, et de facto clericum lædit. But you will say, why does this one incur the censure of excommunication according to the canon, and not rather an obligation of restitution?

It is decreed: difference: it is so because restitution is due to the person only if an injury has been inflicted upon that person; but excommunication incurs when an injury has been done to the ecclesiastical statute, which in this case already exists; and amends are required with respect. Pauli sunt accidentales et materiales; sed tuis sunt reales et formales. I think all the

more that the killer should not be excused from avoiding the ensuing irregularity, as it is said in canon C. N. Cov. Cordub. t. 20. c. 3. qu. 10. praec. c. 3. n. 206. et cum Con.

C. Concilii 1587. ap. . ubi ita declaratum fuit, quod mandans occidere hominem, non incurrit irregularitatem, si mandatarius errans occidat eum. But it is replied: in this case the commander is not to be considered irregular, because with respect to Paul's death it cannot be said that he was a true commander; for Paul's death occurred entirely through the error of the executor, not on account of the command; but he who kills one person for another is truly called a murderer. Neither does it hinder saying that if anyone, wishing to cast a stone in order to kill his enemy and accidentally kills merely by chance an innocent friend, he does not incur irregularity, as Bonaventura says in the aforementioned place. Thus also it must be said of him who, wishing to kill his enemy with a knife, accidentally kills his friend.

But I respond: in the first case there is present a wicked intention alone, but not external murder, since that killing occurs entirely without will; whereas in our case there is present both an intention and external murder, for the slayer wishes to kill a man and does in fact kill him, although he has erred regarding the person. 629. — Question NoneII. Nam si quis velit accendere domum Titii inimici et accenderit domum Caeci amici, tenetur Caece restituere damnum? The first sentiment absolutely affirms, as stated by Bon. 3. p. 2. n. 200.

Reason, because every action contrary to justice, when executed with advertence to mandate, entails a burden of restitution; nor is excused an error of the person of the master, since the error concerns quality alone and not substance. The second sentiment with Leander, tome forty, question twenty-eight. Molin. tom. 3. d. 127. n. 4. 8. tr. 3. §. 6. n. 2. verb. I spoke; Sporer, Treatise on Rest, Chapter 2, note 439.

Lugo de Just. d. 17. n. 78. et d. 18. n. 86. Croix l. 3. p. 2. n. 200. with other learned juniors, and especially with my most illustrious teacher, the very learned master. The bishop of Torno denies that he is bound to restitution, provided that he does not intend it, neither even confusedly, to set fire to another's house than Titius'; namely, if he had not been thus minded, at least implicitly prepared, which would have been the case even if he knew the house belonged to Caius and still set it on fire, because then it is considered that damage was inflicted upon Caius as lord of the house, not as Caius personally; and therefore restitution should be made to each one's lord for his damage. But similarly, if he does not intend to harm anyone other than Titius, whom he believes invincibly to be hostile and to

have a house belonging to Titius, then...

Reason, because for the obligation to restitution, which arises from the principal damage caused by injury, formal injury is required; mere material injury and effect without animus is insufficient, just as mere affective injury with an incomplete external act would be insufficient; thus Cardinal de Lugo speaks: when I intend to cause harm to Titius, with that animus alone of inflicting injury on anyone else excluded; but if later through invincible error I injure Caius, the injury in respect to Titius is not formal and effective, but merely material and affective, and purely accidental, since my mind was not set upon injuring him either specifically or generally; and therefore I am not bound to restore the damage that arises from such an injury. It does not hinder to say that it suffices for the obligation of restitution to intend some unjust action and carry it out; for the Doctors cited respond that, in reason of damnification, it is not sufficient merely to have a materially unjust act, but there must also be an act formally unjust or voluntarily injurious to another, who is injured. In nostro casu tamen deficit haec voluntaria injuriosa actio, quia accidit actus praeter intentionem, qui formaliter nullo modo aliqui laedit: nam si intendam tantùm Titium laedere et quemcumque alterum exclusurus sum, tunc nec quemquam volenti offendio; non Titium, quia de facto non laedetur; non alium, quia respectu istius mea actio est prorsus involuntaria, et ideo error est circa substantiam. And for the same reason they also say, preceding chapter 3, note 206.

Fillius tractatus secundus caput tertium quaestio decima. Cross 1. 3. p. 2. n. 204. Leand. 1. c. . 6. c. 4. §. 3. n. 31. (contra Bon. 1. c. n. 8. cum Cov. Gom. et . 9. d. 32. n. 27.

Nor does it hinder the text in 1. 30. That person who §. If he had sworn, ff. according to the law of oath where it is said, that if anyone is injured by someone who thinks him to be another, he shall have an action for damages against that person. For it is replied that this proceeds in the external forum; where the presumption of scientific personhood being wronged stands against the wrongdoer, to whom no minimal faith is accorded, if he asserts that he intended to offend another; but not in the internal forum, where the wrongdoer is certain that he offended the one whom he intended to offend. The same is said about theft by Molinaeus 1. c. Lugdunensis d. 17. n. 78. and 4. de restit. c. 2. n. 139. and it is thought probable by Leander. For Lugo says, that if the thief, having unjustly received the thing, wishes to absolutely possess it, then at least he desires to cause an injury in confusion to whoever that person may be: but rather, he says, if he receives it under a specified condition, for example, if the thing is that of a prince; because then he does not intend to absolutely

possess it.

But to this doctrine I do not assent, and I adhere to the opinion which is held in 2. cap. 23. n. 457. In theft, however, attention is not given to whom he wished to injure, but rather whether he truly wished to receive the thing against the will of the lord; for in this it appears that the obligation of restitution due to injury differs from the obligation of restitution due to theft: for in the case of injury, primarily the intention is to harm the person of the lord, and secondarily his damage; whereas in theft, primarily the intention is an unjust gain, and secondarily the injury to the lord; and thus the error of the lord seems to be concerning quality in the case of theft, but concerning substance in the case of injury. 630. — « 3. If he who has been injured has forgiven him before his death, the slayer is under no obligation: for injury is not done to the heirs in goods, save so far as they are injured against the will of the father; hence, just as through him they acquire rights, so also do they lose them: even though the parent does not act rightly, if the children are greatly in need. Thus also point 8, no. 143, with 3rd part, 2nd question, no. 310, with Lugo: For the remission of an injury being made, it is not understood that the remission of damages has been made.

See number 1412. 631. — “4.” 'Even though precisely for life, member, and killing it is not a remission: yet by the judgment of the sentence the injurer is nevertheless compelled to make satisfaction for the injury.' It is advised that the confessor impose almsgiving and masses for the salvation of those who have been killed. If a servant or an animal has been killed or maimed, then also restitution must be made for life and limbs, because the value of these is estimated; and therefore it should be restored to the extent that it could have been sold; and in case of mutilation or scar, to the extent that it would have sold for more.

Nothing is restored for the expenses of the funeral; because those would sometimes have to be finally made, unless perhaps by reason of the occasion of the death, such as when it has been brought about that one ought to become greater outside the homeland. Impensa debent restituiri, facta in curationem et medicamina vulnerati, vel occisi. Fill. tom. 32. c. 8. n. 202. « 9. Likewise, profits which ceased from mutilation or violation; not indeed as if they had been acquired in fact, but rather according to a greater or lesser hope, than the injured party would have had in acquiring them.

See Prull. l. 7. c. 8. d. 3. « 40. If a murderer is condemned by the magistrate, it is true that as yet he satisfies justice insofar as his own death suffices to make reparation for damages, and not for the heirs who were

killed; although these latter, since they usually do not demand otherwise, seem to be contented with this, and therefore at that time the heirs of the murderer are held to owe nothing. Fill. l. c. n. 214.

41. Restitution must be made only to the parents of the one killed, to the children, and to the wife: because these alone are directly injured, since they are morally considered as one person with the slain individual. Unless, however, he has also killed with an intention to harm others; for then too restitution is said to be owed to them according to the Cardinal. Lugo de Just. d. 41. n. 8. ea. l. c. d. 4.

» Question NoneI. To which heirs is it incumbent to have the murderer restore the damages? And what damages are to be restored?

It is certain that to heirs necessarially, such as children, parents, and even the spouse, restitution must be made of both the loss of profit and the damages, not only what ceased in the life of the deceased, but also after his death, according to time which the defunct would have reasonably been considered capable of earning, taking into account age, health, etc., as correctly teaches Cons. l. 1. c. 4. d. 2. n. 10. cum Panorm. Goat. The inheritance due to necessary heirs, such as children, parents, and even 'widow, must be restored to them both the principal and the lost profit, not only that which ceased in the life of the deceased, but also after his death, according to the time which the defunct would presumably have survived had he lived, considering his age, health, etc., as correctly teaches Cons. l. 1. c. 4. d. 2. n. 10. cum Panorm. Gom. Palao et al. However, this profit is not to be restored entirely, but according to hope, so that the same may be.

Thomas and others, against the Panormitan. Gom. and others. It is certain H., that which must be restored to non-necessary heirs every real debt contracted with the deceased before his death, namely the damage inflicted upon his goods through homicide, and the profit which he lost during the time he lived: but not the profit which ceased from the time of death, because this does not constitute a real debt, according to the contract with the deceased, as Sotus and other doctors say in c. duß. 3. n. 9; and Croix agrees in l. 3. p. 2. num. 309. He also says there that if no heir should have survived, the restitution of said real debts must be made to the poor. Croix adds moreover in the same number 309, that if the wife (and this would also be said of sons and parents) should subsequently marry equally conveniently, or if anyone should have provided sustenance for her, then to her nothing is to be restored, because then she herself does not suffer damage.

632. — Quæritur II. "An' homicide 'is bound 'to restore goods to brothers, consanguineous relatives, or others, which the slain one would probably have given them if he had lived?" Three are the opinions. The first universally affirms, because although those individuals did not have a right to such goods, they nevertheless had a right so that the deceased would not be hindered by force from disposing of them for themselves.

Thus regarding the remainder. c. 2. punct. 8. n. 105. The second states that the restitution is due to the brothers, other than parents, wife, and children. Faults, et praeterea probabilior sententia quam tenent cum item P. Concilii tomum 7 paginae 214 n. 48 et numero 407 et 108 tam Soto Lugo citato n. 108 et Lugo dispertionem 41 n. 147 id quod dicit 1 quaestio 4 caput 4 decretum 3 n. 41 esse semper contra justitiam impedire vi aliquem a consecutione boni cum hujusmodi impeditio praevidetur nam respondent justitiam non obligare ad non apponenda ea (etiam vi vel fraude) ex quibus per accidens et remotè sequitur aliquod damnum quia tunc vis aut frater non censetur esse illius causa nec physice nec moralis. The rule, however, according to which one has a right that he not be impeded by violence from the attainment of just goods, holds when the damage is directly intended, not if it happens accidentally. On the contrary, they say that the murderer ought to be held responsible for restitution, if he intends their harm.

But they concede that it is sufficiently probable the opposite judgment, namely, that then too one should be held responsible for nothing, since there is no external requirement against justice towards those who have been damaged, as they hold in n. 108 according to what was said above under n. 583. But I cannot acquiesce in this judgment; for the slayer certainly sins against justice towards others with a mind directly intent on harming them, since everyone has the right that he not be hindered by force from obtaining just goods. Then indeed the slayer has already inflicted an external unjust act upon them by deed; and on this account they rightly hold him bound to restore them indemnified, as stated in the Decretals, loc. cit., § 3, n. 43, with reference to article 1, n. 8, and in Orvietense 1, 3, p. 2, n. 310. Elb. eum Henr. et Ills.

Translation: Elb. him Henry and Ills. Nor is it valid to say that, if this is held to be bound by restitution, why should he not be held who impedes another out of hatred from obtaining the just good mentioned above in number 584, and is not considered bound? It is replied that he is not bound, because the malice was entirely internal to a wicked will that hated; but this has proceeded to an external injustice, as in murder of the debtor; and each one has the right that unjust harm not be inflicted upon him, and therefore the murderer is bound to restore the damage to him.

634. — « 42. Even though it is probable that restitution should also be owed to creditors killed, if any damage has come to them from that killing; yet even a contrary opinion (at least according to the limitation of the preceding case) is probable, since that killing was not directly causative of that damage.

See c. n. 4. In this question, namely, whether the homicide is bound to restore the damage inflicted by that act upon the creditors of the slain person, there are three opinions. The first opinion states that he should be held responsible if the murderer anticipated their damage. Thus concerning the remainder, canon 2, point 8, number 140.

Secondly, it says that he should be held responsible, whether or not he foresaw it; because creditors had the right to demand their debts from the one who was killed. Mol. et ibid. The third opinion, however, which §3.n.12 holds with the dictum of l.n.41 and q.7.art.1.num.8 teaches, is that he should not be held responsible for restitution, even if he foresaw the damage, provided that he did not intend it, because the damage to them then occurred by chance. Secondly, if damage to creditors had been directly intended, as stated in no. 43 and ; this is rightly called more commonly and more proba- bly by P. p. 214, n. 10, according to what was previously mentioned above no. præced. « 43.

The slayer is not bound to restore anything to those whom he slew out of liberality, because their damage then follows by accident. . 2. Chapter 9, Article 26. » 44. Neither is he bound to make reparation for damages which, e.g., arise from the death of some innocent person who through error was thought to have committed homicide, and thus was taken and punished; because this death would not be directly caused by him, but accidentally, and either through error or the malice of the accusers. See Bon.

d. 2. q. ult. sect. 2. p. 2. 635. — Question NoneI. Whether the one who has suffered damage is to be restored by having compensation made to him that comes about through your homicide, namely, if that crime is imputed to him?

He responds. 2. Chap. 9. dub. 16. n. 410. that certainly you are not bound to restore the damage to another if you do not advert to the harm that will befall him. What, if you do take notice? Navar. apud l. 1. c. 4. dub. 5. n. 6. alique ap. 2. c. 9. n. 414. dicit: te tenèri ad restitutionem, quia tunc fuisti causa efficax damni.

However, they more probablistically deny that you are held responsible together with Soto, Lopez, and others, as stated in chapter 4, section 1, note 3. Reason, because that action is not considered injurious to another, from whence comes the damage not from itself, but from the error of others, although the error can be foreseen: nevertheless (as well as it is properly limited . 414. . 4. and Croix l. 3. p. 2. n. 457.), that action exteriorly is not such that its circumstances proximately morally impute to a third party, as they say in q. 7. art. 4. n. 5.: ll. cc. if you kill in the clothes or arms of Paul, or in his house, or field, or with his servants. Unless (they nevertheless add . c. and because then no injury is inflicted upon anyone, although it may be a transgression against charity if at that time one's own right to use something is insufficient; 686. — But greater doubt arises if not only one is aware but also one intends for the homicide to be imputed to another? Lugo in just. disp. 8., num. 75, cum c. sibi non bene congruens cum dictis à se q. 2., art. 4., n. 5., affirmat, is tunc teneri ad restitutionem; quia licet tua actio sit causa remota imputationis, tua tamen prava intentio nocendi efficit ut sit causa moralis illius damni.

But I think it is still more probable that you are not held responsible even in that case, as they teach with Angles, with Diana, etc. The reason being that the action itself, or its circumstances, never stands proximately as a cause of imputation without, as explained above, an evil intention according to the common judgment failing to make that external and heavily burdensome work unjust, from the perspective of a third party. But thou mayest say, as some one doth, that he who slayeth a man, though thereby he doth not harm his brothers or others whom that man had benefited, nevertheless, inasmuch as we have said n. 633, is held to restore the damage to them; so also is he who killeth another held to impute homicide to the other. But it is replied that the case differs; for there the damage to his brothers was necessarily and closely connected with the death of the benefactor; but in the present case the damage to him to whom the homicide is imputed is not necessarily, per se, and immediately connected with the death of the one killed, but remotely, and merely by chance, since it properly depends on the judgment of others who suppose it from extrinsic conjectures, as if he himself had been the murderer. Wherefore this homicide is merely an occasion for imputation, not the true cause, because it was not proximate and direct. 637. — Question None

II. Unde hic homicidium est tantummodo occasio imputationis, non vera causa, quia non infuit proxime et directè. Whether one is bound to restore the damage found, which exceeds the moderation of the accused’s guardianship? They deny it. They deny it.

Sylv. disp. 9. n. 81. et; quia tunc invasor putatur cedere iure suo. However,

Lugo n. 50. and Croix l. 3. p. 2. n. 305. cum. Valla et alii communiter, probabilius putant eum teneri ad totum damnum, quia excedendo jam gravem injuriam alteri infert; et invasor utique habet jus, ut à nemine ex privata auctoritate injustè occidatur. 638. — Censet autem 3. part. 2. n. 307., quod si quis provocet alterum ad pugnam, et illo acceptante, occidat, tenetur restituere damnum; quia provocatio fuit vera damni causa. But more probingly (1) Lugo disp. 42. n. 58. contradict Vasq. et aliis; for although he who provokes sins against charity, yet when the other accepts the fight by fighting he does not sin against justice. 639. — Question None

III. In restitutione lucri amisi ab occiso propter occisionem, debeat detrahi pretium laboris, quem ille pro lucro obtinendo impendere debuisset? Molin affirmant. Nogant however more commonly DD. with ## ARTICULUS IV. ### What should be restored for the incurred rape?

What is the obligation of the rapist if he has corrupted a virgin by force? As to what, if a virgin has consented? When the deflowerer is bound by a marriage contract to that? If I have corrupted myself by my promises, am I bound to the marriage?

Lim. I. What, if the girl shall have perceived the fiction? Dub. 1.

What, if a man be of better condition? Dub. 2. What if the girl has ignored the disparity? Dub. 3.

In these cases, let the man be held responsible, at least for damages. 644. Limit. II. What if a worse evil is feared, or scandal to relatives? And what if disgrace to the family is imminent? 645.

Limit. III. What if a man extorts mere touches? 646. Lim.

IV. What if hunger has already become corrupted? 647. Limit. V.

What, if the marriage does not stand by reason of a man's fault, should be done then? 648. If a virgin who has been violated refuses to marry, is she bound by law for her betrothed to sue for damages? Whether a man, having taken a vow of chastity, is bound to marry a virgin who has been violated under the bond of matrimony? 650. To what end is the man bound who violates his cousin in a conjugal relationship that he had promised?

What if he has actually promised by pact to obtain a dispensation? 640. — The response is that whoever through injury deflowered a virgin is bound

both to make reparation for the damage which such an injury brought him, whether this be done through marriage or by estimation of the damage at the discretion of a prudent person, so that he may find himself in possession of such a virgin as she would have been had she remained chaste. See book 7, decree 14, chapter 8, note 209. Herefore, if the ravisher is unable to provide a dowry, he is bound to marry her. No. 27. Unless the excess be great. See below numbers sequentiae 642 et 649. in fine. ### Unde resolves: » 4.

Precisely, restitution is obligated solely for virginity. Wherefore if one considers (1) This does not seem to be much or notably more probable in the mind of the author, he simply says that it is probably true in the 10th chapter, 89th section. The adulterer is held to nothing, if it remained hidden, or did not hinder him from marrying equally splendidly. » (But if a virgin seeks satisfaction before she marries, she is bound to have satisfaction given her, even though the rape was hidden. n. 32.) 644. — « 2.

Item ad nihil tenetur, si defloravit consentientem absque vi, fraude, vel promissione matrimonii, quia non est facta injuria, ibid. et 2. » 3. — « If by importunate prayers he has induced a virgin to consent freely, nothing is bound to restore it, because she still has freely consented: unless perhaps such prayers were equivalent to violence and coercion, so that if they had been joined together with threats or reverential fear, for instance, if the said person was the lord or husband of great authority over her. d. 3.

4. If by a true or false promise he has inclined her, then one is bound to marry her, because in every contract where one party has accepted and fulfilled, the other is bound to fulfill as well, even if it was falsely contracted, for he was bound by justice to truly contract, otherwise all mercantile dealings would yield to fraud. And this is indeed true, even if the ravisher had professed religion. . 2. c. 40. d. 3. et 4. . 3. If by a true or false promise he has inclined her, then one is bound to take her as wife, because in every contract where one party has accepted and fulfilled, the other is bound to fulfill, even if it was falsely contracted, for he was bound to contract justly, otherwise all mercantile dealings would suffer from fraud.

Nevertheless, a false promisor is not bound to lead her into that case, where 4. Does it easily indicate a fiction that she greatly exceeded in condition or used words? 2. If herself she were conscious of the aforesaid vow: "for then she would have contracted it by an unlawful bond." 3. If he himself supposed her to be a virgin, although she was not.

If from the marriage grave harm, or scandal were feared. 5. If he himself has already been initiated into the sacred mysteries, or joined in marriage with another; then in these cases alone would care be taken that he marry so as to do so conveniently and properly, namely by giving a dowry, or otherwise as stated before. See 1. of the Decretals on Marriage, Decree 40, Chapter 7, Title 9, Decree 3. All these matters, since they concern very grave affairs and are frequently brought to practice, should be diligently discussed and elucidated; first, regarding the obligation of the man deflowering a virgin without any promise of marriage; secondly, regarding him who deflowered her, by promising marriage. ## §. I.

To what end is the deflowerer bound, if he does not promise marriage? In hoc distinguendum: si virgo libere consensuerit, commune est deflorantis nullo teneri ei restituere. But a doubt arises: whether in that case he is bound to make amends for the injury to the girl's parents? There are two probable opinions.

The first opinion denies this, and this view is held: lib. 7, de disp. 14, nota 11. They discuss penance, d. 16, n. 223 and 224, d. 22, sect. 4, n. 7, 2 c. 10, d. 1; and they consider it probable, Croix, lib. 3, p. 2, n. 316, et 3 tr. 3, p. 3, c. 13, n. 1, with Soto, P., Ratio, quia, si ipsa puella, cum sit domina sui corporis, nullam irroget injuriam patri, si deflorationi consentiat, utens jure suo, tanto minus irrogat deflorator. She will sin only thereby, and consequently also the violator will sin, against the due piety towards her father and also against obedience, if she had express prohibition from her father regarding such a crime, as the Second Sententia indeed affirms, and thus hold St. Anthony 2. p., tit. 5. c. 6. §. 4. . 49. In Cordova, l. 4, q. 43, col. 4, § Ubi; item Banez; et in fine cum Cajet.

And the same is held by D. Thomas 2. 2. q. 154. art. 6. ad 3., who says: He commits an injury (the deflowerer) to the father of the virgin girl; hence according to the law he is bound to punishment; namely, from Deuteronomy 22, where it is stated that if those who had deflowered a virgin were brought before judgment, they were required to pay the father of the virgin girl fifty shekels. However, D. Antoninus rightly notes that this place has relevance only after the judgment. The said second judgment teaches that the girl and her violator both sin doubly, namely against chastity and justice; therefore, the deflowered one should be restored to her father the honor taken away by some sign of honoration, whether through petition or otherwise; unless it is presumed that the father does not wish such satisfaction. Question arises: whether the violator is bound to restore to the parents the damage to honor when restoring a deflowered virgin to her father, who has had some sign of honor taken from him by way of compensation, thereby coming to meet

them in part on account of the dowry which they should augment for placing the daughter in marriage?

Affirmant Azor t. 3. l. 5. q. 4. diff. 9. et Corduba l. c. quæst. 43. d. 5. et alii. But most commonly they deny it: Soto, l. 4 de just. q. 7 a. 1 ad 2 de pænit. d. 22 sect. 4 n. 26 . l. 7 d. 14 n. 41 . 2 c. 10 sect. 1 n. 9. Lugo, de justitia, dubium 2., nota 8., cum quaestio 1., pag. 352. Mol. d. 206. n. 2. 3. tr. 3. p. 3. c. 43. n. 2. cum Sylv. et 42. de rest. c. 3. punct. 4. §. 4. n. 2. cum P. Excipitur: si vir deinde facinus propalando puellam infamaverit, tunc enim ex justitia tenetur omne damnum ex infamatione proveniens, puella et parentibus resarci re; ut recte advertunt in fine, et n. 7. in fine.

It is excused 2. if the deflowerator be very rich, and the girl poor; for then he is bound to give her some at least part of the dowry, although he did not promise it, because she is deemed to consent to her own deflowering under this expectation, and by reason of a certain implicit contract: thus in Bann. Villal. et dicant ad id teneri violatorem tantum ex consilio, et aequitate. It is received 3. that at last, if the judge, following a probable contrary sentence, condemns the deflowerator to punishment on account of the injury inflicted upon the parents; for well does an action for injury against him competently belong to the parents, as Lugo says in dist. 42, n. 40, and Molina in dist. 104, n. 42, with Gutier and Salcedo. However, speaking of laws which externally constrain the deflowerator to lead or marry the girl (as is found in c. 4 and c. 2 de adulter., and in l. unic. ff. de Rapt.), they correctly say that c. 3 n. 5: that one should not be held culpable of consent, if the girl has truly given her consent spontaneously; unless it is proven otherwise, the laws ordinarily presume that she was deceived into being a virgin.

Laws indeed, which are founded on a false presumption of fact, do not bind in conscience, as we said at the end of book 4, number 400, verse v. I ask. It is pleasing to obliquely note here with reference to the aforementioned article 2, conclusion 2. You inquire greatly about how it would be very useful for avoiding such sins, namely that promises of marriage made with the intent to obtain defloweration, even perhaps a solemnly sworn oath, should be declared invalid by the Bishops, as is reported in the practice taken from the aforementioned author in a certain French diocese with great success.

Furthermore, it is to be noted from Sylvius in the aforementioned article 1, conclusion 2. Ques. 1. in fine, quod si vidua habens bona relicta a viro cum conditione ut castè vivat, fornicetur nequit bona illa retinere propter conditionem non servatam. This concerning the man who deflowered a consenting virgin. If, however, anyone by force, threats, or fraud violates a

virgin consensually given in marriage, he is bound to make good all damages to both the maiden and her parents in respect to honor and fortune, according to the saying: "If there be fault, of injury."

Hence he is bound to augment such a dowry, so that the maiden may wed honorably and well, as if she had not been violated; thus commonly in Lugo it is said, d. 42, n. 43, n. 44, 7 d. 44, n. 12, q. 2, n. 3, et qui addunt, that even the deflowerer himself should be made to give something at the prudent discretion of the maiden, on account of her sorrow and the danger of enduring vexation from the man if she is recognized as corrupted. Satisfacit tamen stuprator dotando, non tenetur enim eam ducere, si matrimonium non promiserit, ut Lugon. 44. et 44. n. 9. cum Verumtamen judex (ut notant .) benè potest eum obligare ad eam ducendam in pœnam sui criminis, ex cap. 4. de adulter.: juxta olim sancitam ex Exodi c. 22. v. 46. ubi: Si seduæerit quis virginem... dormieritque cum ea: do- tabit eam, et habebit eam uæorem. Si autem ipse vellet eam ducere, at puella nuptias respueret, tenetur eam omnino dotare, ut rectè dicunt n. 42 cum Azor et Turr. ac cum 648. Et idem dicendum etiam in dubio, an puella fuerit prius, vel non, ab alio cor- rupta, quia præsumitur ipsa integra, donec certò oppositum probetur.

Moreover, if a man has a thing with a girl who is openly corrupted, or with a widow of good reputation, and from his own unjust concubinage let her reputation be brought into disrepute. Accordingly, however, if the concubinage remained entirely secret; then it would be bound to nothing: thus n. 4. de restit. c. 3. p. 4. §. 4. n. 11. ex communi DD. 642. — Doubt arises 4. What if a virgin is unjustly violated and later justly marries equitably? It is responded that a violator is not held to anything unless before marriage the dowry of the virgin had been adjudged either by sentence or by pact; for otherwise he is held to nothing: neither for the violation of virginity, which is irreparable; nor for damage, since no claim exists.

Lugo d. 12. sect. 4. n. 16. n. 4. cum Kasq. Cordovae, et Azor ac ibidem n. 12. cum Dicast. Villal. P. Dabium fit 2.

Let her be compelled to marry him who by repeated and importunate petitions, or by gifts, or by promises has induced a virgin to consent to deflowering. They commonly deny it. Book 4, Decree 10, note 1 and note 14. Lugo, d. 12, sect. 1, n. 4, et cum. They receive the 4th of the aforementioned authorities, if joined together with prayers, either threats or a reverential fear.

They receive permission 2. if the prayers were so importunate and

frequent that the girl thought greater harm would come from that vexation than from the loss of virginity; for then such importunate solicitation is compared to l. 4. de raptu, et Glossa in c. Scienti, de reg. jur. in 6. Although it is well added in n. 45 that this rarely happens, namely when a woman can easily remove the conceived anger or otherwise free herself from the importunate solicitation. They receive 3. On page 353 at the end, and with note 16 along with Bann. Tapia, and they hold 4. ibid., at the end, to have the violator held only to a part, not however to the entire repair of damages. § II.

To what is a deflowerator bound, if marriage is truly, or by way of a valid promise? It is asked. He who by means of a false promise of marriage has induced a virgin to consent to copulation is bound to marry her? First opinion: let him not be held bound to her, but rather let him make amends by marrying her if he compensates her with a dowry for the harm done.

Thus Gabriel and Barth., in Marriage cap. 4, punct. 3, n. 33, hold the same view; likewise Decretals lib. 7, cap. 5, § 3, a. 44 holds it, and considers it probable there (who also quote St. Anthony, but not correctly; for in this case the seducer is not held by force of promise, since the consent has failed; he is bound only by damage: inflicted; therefore suffices if he makes amends for the damage). Second opinion, however, which is altogether to be held common, teaches that he is bound by marriage. This he holds to, in response to the second objection and what follows, as stated by Busenb. above. S. tit. 5. cap. 6. §. 4. n. 48. lib. 4. d. 10. n. 3.

Lyon d. 42 n. 20. Damaged. Book 2, Title 40, Doubt 3, Notes 20 and 36, On Apona, Decree 4, Part 2, Note 3. Note 44. Croia l. 6. p. 3. n. 69. q. 4. art. 2. n. 3. 5 tr. 40. p. 4. c. 4. n. 44. cap. 4. n. 49. et alii passim. He approves the probable opinion.

P. de Adult. where it is said: If a man shall have seduced a virgin who has not yet been betrothed and lain with her, he shall pay and keep her as his concubine; if the father of the virgin refuse to give her in marriage, he shall pay a just sum equivalent to the customary dowry that virgins have received. But from this text our judgment is not sufficiently confirmed, for it teaches that the aforementioned law does not obligate in conscience before the judge's sentence. Here however it must be noted that: annates are to be held in conscience as having deflowered either the virgin by force or by other means to repair the damage. Hence, if ultimately it cannot be restored, it must be held with Lugo, n. 48, that he is absolutely bound to bring her to this; unless (properly) Lugo himself ibid., in conjunction with Molina, excuses the coeditio of a man greatly exceeding the condition of his nature: namely, no one is burdened with restoring his

own damage, unless the debt exceed properly.

Better nevertheless is our opinion confirmed by intrinsic reasons. The reason is fourthly, namely, that otherwise, if the ravisher should carry off a virgin who has been deceived but does not deflower her, he would never render to her what is equal, nor would the damage be sufficient. Reason 2. because in contracts infamous by nature, do as you have done, and give as you have received, when one party has fulfilled his part thereof, the other is bound to fulfill it according to justice even if he had contracted so. Since indeed human commerce is rightly conducted for the common good, the law of nature demands that every fraud be removed from contracts, and therefore it obliges those who have been defrauded, so that in punishment for their own fraud they are held to restore the deceived parties exactly as they were before, as if no fraud had ever existed.

Wherefore, as in other contracts when the thing is not whole, he is bound accordingly; for instance, the seller to deliver a house sold, for which price has already been received, although falsely contracted, according to the common judgment which we refer from contract no. 709. Thus in the present case, even if elsewhere reparation for damage might be made otherwise, the deflowerer is absolutely bound to contract the marriage promised. 643. — However, this judgment is limited, I, unless the female could easily have perceived the deception of the promisor from words or other conjectures; for then the deflowerer is not bound to keep the promise, since in that case it seems she herself wished to be deceived spontaneously. Thus commonly. I. d. 40. n. 7. cum. Antonin.

Ong. Sylv. cap. 10. n. 24. that is, if a man has spoken inconstantly, or has used ambiguous words, or has employed excessive exaggerations, then he is not bound to marriage. But in that case he is bound to the award of damages, which we shall see more closely below; Doubtful 3. But here there is a doubt 4.

Is it bound to be held that a rapist is obliged to marry fictitiously promised nuptials, if he himself notably exceeds in nobility or wealth the condition of the woman, and she already knows the disparity? l. 42. c. 2. n. 45. Croix lib. 6. p. 3. n. 74. cap. 4. n. 44. cum ut supra, cit. n. 37. Lugo de just. d. 42. n. 24. (cum communi, ut asserit) et cum S. Anton. Arm. et aliis pluribus.

Reason, because the very disparity of condition by itself provides a motive, it leads to prudent doubt concerning the truth of the promise; for if the female in that case had not doubted as she should have, this would happen by chance and is to be imputed to her negligence. Thus explicitly taught 2.

ad 4., where it said that the bridegroom, by extorting copulation from a virgin through a fictitious promise, is bound to marry her unless he has taken another wife; but if he has taken another wife, it suffices for him to provide for her in regard to the marriage; and even this he is not bound to do, as some say, if the bridegroom (note) be of better condition, or if there be some evident sign of fraud, because it can be reasonably presumed that the bride was not deceived, but rather pretended to be deceived. And in these cases the man is not bound to marriage, even if he has confirmed the promise by an oath, as Lugo says, n. 22 and . 4. d. 9. n. 8. and d. 40. n. 8. with St. and many others. Reason, because a vow does not oblige unless according to the intention of the one promising.

How great, however, this disparity must be to liberate a man from marriage? Chapter 40, number 24 requires it, namely, that the man be far nobler, that is, if he is the son of a count, and the woman be the daughter of a craftsman; but 4. Decret., chapter 40, number 6, with St. Augustine and subordinated Sanches with . Cardub. Verocr. et: he admits the same, number 48. Is obliged to fulfill promises... unless they would be very unequal in rank, power, or wealth, for example, if he were noble and she a farmer's daughter, or the daughter of an artisan.

The same is taught by D. Anto- nin. p. 2. tit. 5. c. 7. §. 1. where it is said: He keeps his promise, unless their condition be very unequal, such as when a noble and powerful man promises to a low-born woman. There is doubt 2. An deflator eo casu teneatur ad matrimonium, si pella omnino disparitatem ignoraverit? They probably affirm Lessius and Basemb. in their citation n. 22., De materia, cap. 4, d. 2: because then the woman in no way could have detected the deception.

They very much still deny probabiliter. Lugo d. 12. num. 31. et 32. . cit. n. 4. . cap. 1. punct. 3. n. 38. num. Horn, et probabilis putant ipsum Monomachum. P. ; the injury incurred in this consists in the fact that he himself does not keep what the woman requested and for which she made him a great provision of her body.

Therefore, in order to make amends for that injury, a man is not bound to give more than what the woman asked: but the woman, being ignorant of the condition of the man, did not ask for anything other than that another person of her same condition, or one not greatly exceeding it, be brought to her. If therefore a man of much better condition should in that case be joined to her by matrimony, he would render more than an equivalent for the injury inflicted, since he would give her something which she neither sought nor intended to seek; and thus he is not bound to take her to wife, but it suffices if he makes good the damage by a dowry or provision for

the marriage. Doubt is cast upon it. Whether in the case where a woman has suffered deception due to a known disparity or for other conjectures, is the man bound at least to compensate her damage?

They affirm that, because he himself has already unjustly deflowered the maiden. But they more probably deny it, n. 24. Lugo d. 10. n. 30. 19: cum S. Anton. Sylu.

Table. Angel. Arm. Log. etc. Ratio, tum quia, quando puella deceptionem jam percepit, ut prudenter percipera debuit, tunc recte praesumitur libè consensisse: tum quia ad obligationem restitutionis non sufficit animus internus, sed amplius requiritur actio externa injusta, per se apta ad damnum inferendum, ut diximus n. 584.

From hence comes a stain, it happens by accident, and no restitution is due. That is precisely held, namely, as we have seen where it teaches that a rapist is not bound to nothing if he is of better condition or has given some other sign of deception, and Title 4, Chapter 19, at the beginning, section 644 — It is limited to II. If there is fear of a bad outcome from marriage, such as if a girl is known to be of very slight reputation, as Bus. says above, Lug. d. 10. n. 23., and . 10. n. 40. with Man. et Henr. They also say, with S. n. 40 and with the Digest, if great scandals or quarrels are feared among those contracting matrimony with consanguinity.

But as regards this point, see what we shall say concerning marriage, lib. 6, cap. lxxxvii. verse. To that however. In casu autem, quo ex tali matrimonio dedecus obveniret familiæ viri, ratione disparis conditionis; puto ipsum minimè tenèri virginem violatam ducere, sive fietè promiserit, sive verè promiserit: nam si fietè promiserit, jam probavimus eum non tenèri ad matrimonium, imò nec etiam ad damna, ut mox suprà diximus. If however truly she is not bound to marry her, because the promise is null, since it concerns an illicit matter, namely marriage with dishonor for the family, as we shall say in matrim. d. n. 854. If you were to say: if a deflowered virgin remits the obligation of promised marriage validly by remission, she freely can do so even though her family's infamy may result from it, because the right to marriage properly belongs to herself, and therefore she can freely give it up, as most probably Lugo says in d. 42. n. 9., against Vasquez (against Cordova and others) num. 9. 3. tract. 3. part. 3. cap. 43. num. 2.

Roncaglia from the seventh precept, chapter two, question four, response two. Therefore, it seems equally clear to say that if a man promises to lead a woman to marriage with dishonor for her family, he validly promises. But it is replied that there is a difference between a promise and a

consummated contract; for a promise cannot be valid unless it concerns a lawful thing, since justice cannot obligate one to an illicit act, according to what is said in n. 742. And therefore a promise to enter into marriage with disgrace to the family is not valid, because it concerns an illicit matter; whereas a consummated contract can indeed be illicit, and yet valid.

Since therefore a corrupted girl validly forgives marriage (although illicitly, if there is imminent danger to the family's reputation), because she yields to her own right; just as she could previously consent to the harm of deflowering, so too can she subsequently yield to acquired right; but if she merely promised herself to cease, there would be no promise, since it pertains to an illicit matter on account of the shame of her family. On the contrary, if such a man contracts marriage with a girl, even though illicitly, he nevertheless contracts it validly. If, however, he merely promises marriage, he invalidly promises; similarly, if anyone having a vow of chastity contracts marriage, he validly contracts it; but if he merely promises, he invalidly promises, and is bound to nothing except otherwise held liable for the harm caused, as we have said above. 645. — Limitatur III. If a man shall have had merely carnal contact with a virgin, thus 4. d. 40. n. 14. with 42. n. 37.

Croix l. 3. p. 2. n. 329. Now (in such a way that Lugo well receives n. 48 and Croix l. c. with it), let it be such that their own touches or familiarity with a woman should not become known, so that she herself, unless taken as wife, should incur infamy. This exception, however, holds true when a man has sought mere touching with the agreement of marriage; for otherwise, as we shall see below, if he has both sought touching and demanded copulation simultaneously, it must be expressed differently. The reason why a man demanding touch alone is not bound to marriage is this: because touch does not entail such an injury as would bear proportion to the burden of being led; and therefore the woman could easily then counteract the fiction of a promise.

Lugo rightly observed in that place that this would occur if the woman were of humble condition; but otherwise, if she were noble and honorable, and so much disfigured by those touches that without hope of marriage they would scarcely be preferable, then the husband is more bound to take her to wife, because the injury would be sufficiently equal to the promised marriage. Lugo likewise considers it proper to say in the same place that concerning a woman of humble condition, if a man should ask for both touch and copulation from her at the same time; because then, as he says, she would not be able to counter the fiction. But with the peace of so great a doctor, it seems to me more fittingly to say in case n. 602 that the man must be entirely excused from the burden of marriage; because then there

would have been no fiction on the part of the promisor, nor would the woman have given what the man sought under the promise of conjugal union; and therefore, since fraud having been absent, he is bound only to make compensation for the damage to reputation, which perhaps she might have suffered from those touches: according to 7. c. 5. §. 2. n. 44. And let me be permitted, incidentally, to say a word about this author, who is by some regarded as insignificant.

It cannot be denied that this author has been very ready to assign weight to probabilities in opinions which did not deserve to be called probable; hence, caution must be exercised when reading him. Moreover, where he speaks according to his own judgment, as with the words of the most learned and illustrious Bishop D. Julius of Torna, he truly speaks theologically, and resolves questions from his own principles; so that the sentences which he himself judges more probable are, with the wise man's judgment, at least more probable. 646. — Limitatur IV. If a man has known a woman, supposing her to be a virgin, but has found her corrupted. Thus punct. 4. §. 4. num. 49. et de matrim. c. 4. p. 3. n. 39. . 4. eod. d. 40. n. 44. cum Layman.

The same is to be said for any other notable error of a man. He nevertheless considers that cases . according to Lugo, decision 42, number 25, a young man should be compensated by reason of the woman's deceit in the act of copulation; unless the woman deceived him by pretending to be a virgin; because then one deception is compensated by another. Those aforementioned authors; but they more probably teach n. 30. cap. 2. q. 5. Concerning vol. 7, pgs. 216 and 248: in such a case, the man is not considered to have been defrauded, unless a pact had preceded that something would be given; or unless the woman had contracted infamy through that very copulation, for otherwise no compensation is due in money for such damage, since such damage cannot be compensated with money, as we said equally regarding the restoration of life and reputation lost (see the aforementioned n. 627.). But it is more probably stated at num. 224: if the girl is thereby rendered infamous and a better marriage is thereby impeded, because it openly shows that she has committed a notorious act of fornication, then the seducer is not bound to anything.

Reason, because then she herself is the sole cause of her own damage. What if the man had not been unaware before the copulation that she was corrupted? They still feel that he should be led to her even when he is yet tender. But it is better to distinguish: If the woman had been corrupted outside of marriage, then one should say with . and . that the man should be led only to the damage, not to the marriage itself, because truly a marriage with a woman who has been unhonourably corrupted is far

greater than exact copulation. If however the woman be of good fame and have been corrupted by marriage, then always the man is to be held bound to lead her, because then the copulation truly is equal to the marriage presupposed, to which the man was constrained through the deception committed, as we said at the beginning of this question n. 648. 647. — The limitation is V: if it does not stand by the man, so that marriage may be formed; but it stands by the virgin who consented to deflowerment under that false promise; then indeed the man would be bound to nothing even if he had truly promised; much more therefore if he will have promised, as in d. 4. c. 10. n. 15 and Lugo, d. 42. n. 28 where this is held certain.

But correctly Lugo receives it ibid., if a rapist has represented himself as a woman of better or equal coalition, although she is inferior, because then he is not obligated to marry her with dower. It is doubtful when he does not stand by the virgin herself, but by her parents, whether in that case the husband will be bound to make reparation for damage? They deny [or: They contradict] 40. n. 46. and Lugo number 25. with Tur. Reason, because then he is not bound by reason of a fictitious promise, since he would be bound thereto only for marriage, as if he had truly promised; nor by reason of any damage inferred, because the damage then does not proceed from his fraud, but from the refusal to consent.

But it seems more fitting to hold the opposite according to Sylo 45 and c. The reason is that, if the deflowerator had truly promised marriage, he would still be bound to compensate for the damage, even though the marriage does not come about through him, so that the marriage may take place, when the promise was primarily made for the purpose of compensating for the damage. When, however, the promise was fictitious, it was certainly made for no other reason than to compensate for a damage; and therefore I think that one is altogether bound as if he had promised that the damage would be compensated. 648. — Quemitur deinde II. If a virgin who has been corrupted refuses to contract marriage with the seducer, is she herself bound to provide a dowry? They deny it. 42. n. 42. and Oricio l. 3. p. 2. ruma. 343. cum Las.

Reason, because there is no sequence, so that the girl, by reason of injury from defilement, may be deprived of liberty to marry whom she wishes. If however herself, being corrupted, should refuse a dowry and seek marriage, Azorius is bound to the rapist by this; but commonly n. 43. and Lage l.c. n. 43. with them say, it suffices that he compensate her damage by endowing her: I understand beforehand, unless there has been a promise, solemnly fictitious as we said above; or unless the damage cannot be remedied in any other way than through marriage, as Croix notes l.c.

with the same authorities. Provided that (as they observe, Lugo n. 18. and n. 649. — Question III. Whether a man who has a vow of chastity or religion is bound to marry a virgin deflowered after either a true or a pretended promise of marriage?

If the vow was made after the promise, it is commonly held by the doctors according to Croix lib. 3, p. 2, num. 320, that a man is bound to marry the virgin, because then the vow is null, having been made to the injury of the girl. It is a doubt, if it was made before the promise. The first opinion denies him to be bound by it, and this is supported by 5. tract. 10. p. 1. c. 2. n. 5. cum. tr. 4. r. 280. punct. 1. §. 2. num. 23. cum Sylv. apud Croix l. 3. p. 2. n. 320. and they call it probable Lugo d. 12. n. 41. ac. l. 1. d. 5. num. 2. cum. Man. ac. et probabiliorem putat P. d. 3. c. 2. n. 10.

Reason, because at that time the corrupter is not held responsible in terms of the damage inferred, since an unjust defloweration without a promise does not precisely oblige to marriage with the deflowered person, but either with the other party, or to lead her, or to provide dowry for her. Neither is it held on the ground of a promise, since that promise was null. Neither does it hinder that a fictitious promisor is obligated to marriage on account of the delict; for the authorities cited respond that the delict of the fictitious promisor lies in this, that, when he could have brought about true consent, he did not bring it about fraudulently. In this present case, standing the vow, the corrupter could not provide true consent, and therefore is bound only to the damage, by providing the dowry or making provision for the marriage in the same manner as if mere defloweration without promise had intervened.

The second opinion is, however, more probable than that which they hold: cap. 2, tit. 10, n. 32, lib. 1, de disp. 45, quaest. 3. Lugo d. 12. n. 42. cum et Gutt. 7. cap. 5. §. 2. num. 34. Sporer on Marriage, cap. 3, num. 604. Croix lib. 3. p. 2. num. 320. teaches that such a rapist must altogether be held bound to marriage.

Reason 1. Because (as we have said), the damage of defloweration is never adequately repaired except through marriage alone. Reason 2: because the obligation to marry the deflowered woman arises not from the fact that the corrupter was truly bound to sincerely promise and did not do so, but from the very sin of fraud, against whose penalty he remains restricted to compensate the other party deceived, in such a manner as if no fraud had intervened; for this is what natural equity demands concerning contracts for the common good. And thus is the opposite reasoning answered. Neither does it hinder the vow made while valid, that it seems the corrupter could not have bound himself to marriage during its duration.

Nam respondet Lugo, communem essentiam, quod debita semper sint preferenda debitis, quae obligationem trahunt ex libero hominis voluntate prout sunt vota. It is commonly taught in 2. c. 15. n. 35. Mol. d. 790. 1. q. 8. p. 2. n. 12. Lugo d. 20. n. 140. cum Reb.

King. And it is proven from the law. Among them, §. That very same text concerning judicial matters where it states: He who by reason of the cause of donation is bound to do something, is condemned insofar as he can perform it, and this alone, deducting what belongs to another. Reason, because in a gratuitous promise there is always understood a condition: "I will give if I am able, or unless circumstances change."

And speaking distinctly about vows, this is taught in . 4. tr. 4. c. 3. q. 6. n. 13. 4. c. 15. n. 39. Bonaventura, tomus secundus, de quarto, quaestio quinta, sectio secunda, nota numero vigintinue, prima pars, pagina sedecima, nota quadraginta, punctum quartum, sectio tertia, numerus ducentosexagintaquatuor. Wherefore vows are not to be fulfilled except out of the good things of him who makes them; but the good things of the one making the vow are those alone which remain after deducting what is alien, according to l. Woman, concerning the law of dowry.

Hence it is, that if anyone shall have vowed to give his goods to the Church, and afterwards shall inflict a damage upon someone, he is first bound to make reparation for the damage, and then to fulfill the vow. Thus the vow of chastity is always understood as made under the condition, unless an obligation arises to compensate another for a loss incurred. And this Lugo d. 12. n. 50. considers valid; and Croix d. num. 320. justly approves against . as will be said below. But you may say: If this were the case, therefore the deflowerer could contract marriage without dispensation?

Not a few AA. hold that he could do so, as in 2 c. 10 n. 34; and c. 3 n. 604; and c. n. 36; and cap. 3 punct. 1 § 2 n. 22, where they think that dispensation was not then necessary to contract marriage, but only recommended, so that the man might also solicit it on this account. But besides this, I respond with Lugo, d. 12, n. 44, that although such a man might be unable to promise marriage, he nevertheless could promise himself the obtaining of dispensation; and for this reason the seducer has already bound himself by reason of deceit, by extorting copulation under the promise of marriage; whence he is bound to obtain the dispensation; because he who is bound to the end is also bound to the means necessary for the end, since he can do so without difficulty. But in this case the deflowerator can easily obtain a dispensation, and therefore is bound: just

as if a religious were bound to make reparation for some damage, and could restore it by laboring or petitioning from the prelate for the faculty thereof, so he is bound to do this. This second opinion seems to me certainly and far more probable.

The first sentence, however, seems doubtful in probability. I dare not call it either probable or improbable. But as for the opinion they hold, namely, loco citato et nota 12, quod est, si vir non possa in talis casu damnum resarcire nec tamen ad matrimonium tenetur. To this opinion I do not dare acquiesce; for it more truly contradicts the most wise Lugo n. 44., and Sporer follows him in the matter of marriage c. 3. n. 595.

Reason, because it is certain among all, that an unjust deflowerator, even if he has not promised marriage, is bound thereby, if he cannot otherwise make reparation for the damage, as commonly taught . 2. c. 40. n. 43. ipse Lugo n. 41. and n. 9. with Modò (benè excipit Lugo n. 48.) himself not being much of a better condition, as we have said. 650. — Question IV. To what is he bound who, under the promise of marriage, has violated a consanguineous relative? Two cases are to be distinguished in this matter. The first case is when a man has expressly promised marriage under the condition of obtaining dispensation; and then, if the impediment is such that the Pontiff rarely or never dispenses in it, namely between consanguines in the fourth or second degree transversely, certainly the promise will be altogether invalid, and hence there will be no other obligation than that of restoring damages.

When however the impediment is such that the Pope customarily dispenses from it, others say that the promise of marriage will be invalid, as Innocent said. Hostiens. Abb. Prepos.

Sylv. etc., according to [the authority], in lib. 5, dist. 5, n. 5: he who considers it probable; and thus all those who excuse the rapist, who is bound by a vow of chastity in the aforementioned case, from fulfilling his obligation in leading him; they say this even more strongly in this case where there is an impediment not only hindering but also destroying. Reason, because this condition is rejected from the marriage contract as impossible; for whatever depends on the will of the principal and is impossible, is so declared according to law. Continuous 137. §. When anyone deposes letters patent concerning words obliging. Because it impedes marriage, as they are incapable of contracting, so too are they incapable of promising; and in support of this opinion, he adduces several decisions from Rote Rom at the end of r. 290.

However, others teach more commonly and truly that a promise

sufficiently obligates; thus in Lugdunum d. 13. n. 33. . 5. §. 40. p. 2. cap. 7. n. 4. Sporer de sponsu, caput 4, nota 214, quandoque de matrimonio, caput 2, nota 74, et caput 3, nota 194, et alia communiter, ut affirmat. Reason 4. because a promised marriage under such an agreement is really possible; for that which the prince is accustomed to grant is by no means regarded as impossible, as is found in the laws among Julian's codes, and in the edicts concerning laws §. It is established by law. Then because every contract, although temporarily impediments make it invalid, can nevertheless be valid with respect to a time when the impediment is removed; for an act done at an ineligible time is valid according to the axiom of jurists as eligible in regard to what relates to that time.

And thus is answered by reasons opposed. Hereby the rapist is bound in that case to request a dispensation, and is not at liberty to contract marriage. The second case is if the promise of marriage is absolute and no mention of dispensation has been made; then it says 5. n. 26. cum Cov. If stipulator 33. ff. de verb. oblig.

But more truly I still think with Lugo, d. 43., n. 54. Croix l. 3. p. 2. n. 314. 7. c. 6. §. 3. n. 37. cum Mol. Tab. n. 25. qui vocat probabile, promissionem esse validam, si impedimentum promittenti jam notum fuerit. Reason, because in such a promise the condition for obtaining dispensation is always tacitly understood as apposited; namely, if a religious promises something he will give, the promise is valid, because the condition apposited is understood to be from the permission of the prelate.

Therefore in such a case a man is also bound to procure the dispensation and to marry; since the same reason applies to both the tacit and the express case. The greater difficulty arises when a fornicator has falsely promised marriage with the condition of obtaining permission for dispensation. Idem Lugo n. 55 recte distinguunt; et si mulier prudenter advertere potuerit fictionem promissionis, vir ad nihil tenetur, quia tunc ipsa sponte decipi voluit. Secondly, if the woman was unable to advert to the fiction; for then the deflowerator is bound by reason of fraud to marry, and consequently to seek dispensation.

What then, if the deflowerer has promised a conjugal union fictitiously but absolutely with a consanguineous relative, not being aware of the impediment? I respond: if he himself has culpably failed to advert, he is equally bound to marriage, because he has already acted fraudulently. If, however, he has acted without culpability, then I say that when a dispensation cannot be obtained without great inconvenience, he is not bound to the marriage, because he precisely did not obligate himself to this, standing as he does in ignorance of the innocent impediment; but he

is well bound to make reparation for the damage caused by the enforced defloweration; and if he cannot make such reparation, then still he is bound to the marriage, according to the obligation that rests upon every unjust deflowerator. Thus Lugo and others say: When however a dispensation can easily be obtained and without great inconvenience, then I say that the man is altogether bound to marry, because he who is bound to the end is also bound to the ordinary means whereby this end may easily be attained, as we said above in n. 649 of the preceding question concerning him who violated a virgin under a true promise of marriage; for one who fraudulently promises marriage is bound to that on account of the fraud in the same way as if he had truly promised it, as we have repeatedly stated.

When through adultery a conjugal partner and legitimate offspring can be damaged in sustenance and inheritance, etc., each adulterer, being the cause of that damage to them, ought to restore it as far as they can without detriment to a greater good and the causation of greater harm. It is common. See . 3. t. 3. p. 4. c. 14. ## Whereupon resolve: 652. — « 4. Concerning the adultery itself, it is commonly not deemed expedient to publicly expose that its offspring will be illegitimate; for it would bring sorrow to its husband, hatred from others, create domestic discord, and besmirch its reputation, by which misfortunes it justly yields precedence.

Moreover, it is added that the offspring does not owe it to its mother to believe itself to be illegitimate. As to the actual adultery itself, it is generally not considered appropriate to disclose that its offspring is illegitimate; for it would bring sorrow to the husband, hatred from the father, create domestic discord, and ruin his reputation, which merits such misfortune. Translation: "tr. 32. q. 222. « 2." However, it should compensate for damage to other industries if it can, for example: by administering the household more diligently; by reducing care for the corporeal body; if it has its own goods, leaving more legitimate than spurious ones; by inducing him so that with the legacy or part thereof, he embraces a clerical state, or a religious one, if he is suitable for it, etc., and similarly.

653. — Question NoneI. Whether an adulteress should be held to disclose the problem if she knows it to be non-legitimate, in order to avoid harm to the husband and legitimate children? Adrian affirms it. III. p. 2. n. 332.

But Sotus, Major, and others deny this ibid., unless the damage be immense, namely of the kingdom, principality, and similar matters. Others however, as Cajetan, deny that one should ever allow oneself to be made infamous by any circumstance; and they approve according to chapter 9 of

the Office on penance and remedy where it is said: "To a woman who, without her husband's knowledge, has taken upon herself an accusation of adultery, although she fears to confess this to her own husband, penance should not be denied." Nevertheless, the last opinion is true and sufficiently common, which I entirely hold to follow, and Lugo number 45 along with Soto, Val. praec. cap. 2, q. 4, r. 2, along with Azor and Fill maintain it. Diana, et Tambur. c. 2. n. 562. tit. n. 457. 3. tr. 4. n. 4.

Ethically it is joined . 2. c. 40. n. 58. This judgment distinguishes: Si a great damage to reputation would greatly outweigh the harm to the husband and legitimate children, then the mother is not bound to endure it; but rather, if the infamy is not so severe. Hereby it is inferred that a mother ought to expose herself. I. Haec sententia distinguit: Si damnum famae multum praeponderet damno mariti et filiorum legitimorum, tunc non tenetur mater illud subire: secùs verò, si infamia non sit tanta.

Si ipsa sit perdite famae, ut et non sufficere quamlibet suspicionem de adulterio, sed requiri, ut alii vulgò de ea malè sentiant. Likewise, what has been said about a woman with a bad reputation, Lugo and [additionally says Lugo] say this: namely, that if it is objected that her own reputation would thereby not be much less estimable than the harm inflicted upon others. II. If otherwise there is fear of public damage, namely, if he be imbued with false morals and should succeed to the kingdom or principality, as . when .

If the mother, by manifesting herself to the son as a bastard, might reasonably hope that he would credit her and cease to be adverse to her, so that she might no longer fear great infamy or vexation for the mother, as Lugo teaches in n. 60. . Antonin. et . . 7. c. 3. §. 4. n. 15. It seems that the same should be said, if the mother could avoid damage by manifesting herself solely to her husband; but well do Lugo and Sed dices say, nor is a mother bound to expose herself to her son, because commutative justice does not obligate one to make reparation for damages to goods at the expense of reputation; which is of higher rank. And hence, according to the more common and probable opinion as stated in n. 627, he who cannot restore the reputation otherwise, is not bound to compensate it with money. From the other perspective, it does not seem possible to say that the mother can bear a slight infamy by exposing herself for the sake of her child, since more commonly do the Doctors with Lugo teach d. 14, sect. 4, n. 52 and punct. 5, §. 2, n. 48.

But it is replied: it is one thing to be bound to restore reputation with means; it is another thing to expose one's own reputation through prodigality in order to repair a suffered loss. For it is not bound to

compensate the reputation with money, because reputation cannot be repaired by any amount of money. When someone has caused damage to another's goods; he is indeed bound to make reparation with an equivalent damage, and even somewhat greater than that, when the damage is repaired through the manifestation of the fact, although it be manifested together with the defamation of the manifestor. In that single case could he be excused, wherein it would certainly be incurred that a much greater detriment come to pass than we have said for reparation of the damage.

In our case, however, it is not certain that the mother, by manifesting herself to her son alone, will suffer a grave defamation; since a sufficiently probable opinion holds that the revelation of a crime to one or another man with affectionate intent does not constitute a serious defamation, according to what is said in book 4, note 973. And in this present case, Lugo and Sporer II say thus: cc. When therefore on one side the mother is certainly bound to suffer damage for the sake of repairing it to her husband and other sons, and on the other side there is no certain excuse, because it is not certain that by revealing her own crime to her son she will incur such a much greater damage as would suffice to exempt her; hence she has an obligation to make restitution, and consequently the mother is bound to betray herself. But I think it should be said, not only if the mother conceives a morally certain hope of avoiding damage by preventing it, as Lugo asserts, and . Afterwards, if there were no hope, or a very slight one. Hence they add and say that in practice a mother is rarely found to have restrained herself from committing adultery with her husband or son, because it rarely happens that such a clear manifestation would not result in an immediate great harm; and on the contrary, it rarely occurs that the son will believe and be held to believe his mother as we shall see shortly in the following question. 654. — Question None

II. In such a case, would a spurious one be bound to believe the mother? Affirms P. Concina pag. 223. n. 40. . 7. cap. 3. §. 4. n. 40. et Host. Panorm.

Med. 43. n. 64. si mater sit fide dignissima spectatis circumstantiis nempe amore in filium et suâ præsenti probitate putâ, si tunc pœnitentem vitam ducat, sacramenta frequentet, etc., aut si sit in articulo mortis et suum dictum juramento confirmet, ut dicunt apud Croix lib. 3. p. 2. n. 334. But most commonly and more probingly, a son is not bound to believe his mother, even if she asserts this by a vow. Thus Lugo says, n. 64, n. 39. cum etc., præc. c. 4. n. 657. (cum communi, ut asserit), 2. c. 40. n. 64. 3. tr. 3. c. 44. n. 4. cum Abb. præc. c. 2. q. 4. r. 2. cum Azor, c. 2. n. 555. Croix l. c. Id probatur I. quia filius est in possessione legitimitatis, cui credere non tenetur, nisi convincatur esse adulterinus vel illegitimus, ut habetur ex l.

Filiu[m] ff[ilio]rum de his qui sunt sui, etc. Vide Lugo d. 43. n. 46. It was proven 2. because no one is bound to believe a single witness, even if he be the most可信的翻译助手 In ore duorum aut trium testium stabit omne verbum. And from c. Licet de testib.: Although certain causes may demand more than two witnesses: nevertheless, no cause is concluded by the testimony of one, even if it be legitimate.

This is what they say: it was necessary for the sake of the common good to prevent frauds. However, it is more fitting to say as they rightly state in Lugo n. 62 and Croix ll. cc., if there are indications so compelling that the son would be condemned as a spurious offspring in external forum, just as if the mother clearly showed impotence or the absence of the husband at the time of conception; then he is held to have himself to be spurious: because everyone is bound by conscience in the external forum, where the forum is not based on false presumption. 655. — « 3. Quod attinet ad ipsum adulterum spurii patrem, etiam ipse saepè excusat vel in toto, vel ex parte, sive quia damnum ab adultera compensatum fuit, vel compensandum creditur; sive quia restitutio huic non potest fieri sine periculo vitae, dispendio famae, turbatione, et discordiis familiarum; sive quia non est certus, filium esse suum. See Chapter 3, Title 40, Decree 6.

Bonaventura de materiam, qu. 4., p. 45, cap. 8, d. 7. Moreover, an adulterer is bound to restore all damages, namely the inheritance left by the husband of the adulteress for her offspring, and the nourishment given by him to the child from the third year onwards: for up to the third year the mother is bound to nurse him. I said that he should nurse him, for regarding other expenses the father is bound. Si vero mater non possit lactare, non ipsa, sed adulter tenetur subire expensas ad lactandum, ut dicunt praec. c. un. n. 3. cum communi.

Unless the father is impotent, in which case the mother is bound (1). 656. — It is asked: 4. whether, if adulterers are rich and expose their offspring to hospitals, they are bound to make good the expenses incurred for the nourishment of the children? The first sentence affirms what is stated in tractatus 43, caput 3, punctum 2, sectio 4, numquam 28, cum Molina . etc., and also at numquam 464, titulus nuncupatur 538. Lugo d. 43. n. 5. etc. Reason, because these pious works are instituted uniquely for the sake of the poor. The second sentiment, however, which Acunna holds, denies this.

Renz. de sexto praecipio capitis quinti quaestio octava et probabilem vocant legisculae et Croix libri tertii paginae secunda numera quadraginta novem. The same opinion is taught in the third part, fourth book, chapter

fourteen, note four: if a hospital be for the rich, then otherwise for the poor; but I hold the aforementioned opinion to be more probable in general; the reason being that such hospitals are not instituted solely for the relief of the poor, but also for the benefit of the rich who are in danger of infamy, wherein they themselves often seek an abortion or kill their offspring so as not to become infamous; and these hospitals aim to prevent such evils: rather, I say that they have been established primarily for bastard children, to save them from the discrimination of eternal and temporal damnation, which they would easily endure out of fear of infamy if they were expected to be begotten by adultery. 657. — It is asked: To what extent should an adulterer be held responsible if it is doubtful whether the child is his or his wife's? Although he considers the contrary probable, yet he says that this opinion is more probable and should hold him liable for damage in proportion to the doubt. The common opinion, however, holds a contrary view, which excuses from any restitution of the adulterer, provided that it is not certain that the child is his; the reason being, first, because he possesses the marriage, and a legitimate son is considered as such unless the opposite be proven; secondly, because the condition of an adulterer who owns his own goods is better, so that he is not bound to deprive himself of them on account of a doubtful obligation. Thus Contin. part. 3. cap. 3. art. 2. sect. 9.

Chapter 2. Doubt 6. Article 5. On restitution. 405 matr. num. 443. with Soto, 2. §. 1. n. 30. with . and others, and it is common ap.

Cross n. 335. with Lugo d. 13. sect. 2. n. 27. Azor, Concina, etc. 658. — Et ob eamdem rationem idem tenent valere, si dubium sit inter duos adulteros cujus sit proles. Thus. l. 4. c. 3. dub. 1. disp. 13. n. 20. Zacharias, lib. 3., p. 1., num. 704., cum Gob., num. 32., cum Sot., et alios. Quæ sententia, spectata ratione, et absolutè loquendo, probabilior est; nemo enim tenetur ad damnum, nisi certò moraliter constet ipsum fuisse causam damni, ut probavimus suprà ex n. 562., cum 2. q. 62., art. 7.

Nor does it hinder to say "cum"; for it is answered that, with regard to the obligation of restitution, the action of injury alone from one side is insufficient, but in addition there must be a certain damage resulting certainly from the action, as the same Saint has taught. From another perspective, so that one may be held liable for restitution, it is not sufficient merely to have placed the action in such a state as to make it capable of causing damage; rather, it is required that he have actually brought about that which morally and certainly caused the damage. Non semper autem adulterium est causa prolis, sicut non semper consilium est causa damni, juxta num. 562. However, by chance it is that no one is bound to nourish a problem when the father is uncertain. He calls this

opinion probable with Croix l. 3. p. 1. n. 704. (speaking of a spurious child born of a freed woman), and common asserts Lugo d. 13. n. 19., against Bardi.

However, Croix himself in book 3, page 2, number 337, speaking about illegitimate offspring, absolutely states that adulterous parents are bound to provide alimony according to a share of doubt; because although no one is bound to make reparation for damage in a doubtful matter as regards whether they were personally involved or not; yet here (he says) each adulterer had a certain cause of damage, for the union of each was the cause of uncertainty, so that they might not be required to provide alimony by someone arbitrarily determined; and in this way it seems that each individually consented to the damage, guarding against such damage by engaging in the union. But this reason universally does not persuade, because it seems to be efficacious only for the second adulterer, who knowing an adultery committed by another, when he sees that his own second adultery is a cause of uncertainty, so as not to allow aliments to be demanded from the first adulterer; or if there were places for several adulteries, if they all consented to commit adultery together. The reason for the earlier adulterer does not hold, for he had no concern regarding future adulteries. And that the second may be held responsible, it is required beyond this, that he himself become aware of the harm that can occur from his own adultery; for such awareness will be exceedingly rare, and consequently so too will be this obligation of adultery; and thus he agrees with me in chapter 18, numbers 452 and 453, along with Petschascher and Babestuber.

See what is said in number 562. 659. — It is asked thirdly whether a certain adulterer is bound to make good the damage with regard to the offspring, if he himself was not the cause of the supposition, namely, if he did not induce the woman so that she might bear a child to her husband as hers, but rather negated such a thing? Three are the sentences. The first opinion teaches that he should always be held liable for all damages; because by his own crime he was the cause of the supposition, namely, that the child is considered to belong to the husband, just as the adulterous woman is the cause of the supposition when she bears a child in a constant marriage. They hold this. 2. c. 10. dub. 6. n. 45.

Lugduni d. 43. sectio 2. n. 14. de decima 3. punctu 2. sectionis 1. n. 36. cum Cajetano. The second opinion excuses adultery; because then the adulterer is not himself the cause supposed, nor does he intend that, but is a medium; just as abortion is not the cause when one commits fornication with a woman, although he brings her into necessity of abortion. Thus Sot. The third opinion is found among the Tambur.

Decal. i. 7. c. 3. §. 5. n. 5. et 6. distinguishes and says, with regard to alimenta, that it is not required for him to provide a father's sustenance; but as regards the inheritance left by offspring, he says that one is not bound to do this, because they hold thus in 4. q. 7. art. 2., and Henrig. i. 2. de matr. c. 2. n. 3., and it is called probable. c. et Faust. apud 43. n. 10. But much more probable to me is the first opinion, that in that case an adulterer is bound both as regards provisions and as regards inheritance, which he is obliged to compensate together with the adulteress for the legitimate children. The chief reason is this: although the adulterer permits his son to be reckoned as such merely for sustenance, yet he is the proximate cause of the child by procreation, and directly responsible for all moral penalties, since in imposing a moral necessity to sustain the offspring, he finds it morally impossible to eject the child from his home on account of the infamy which he would thereby incur. Thus. 2. c. 10. num. 48.

P. Canc. tom. 7. p. 222. num. 7. Cross I. 3. p. 2. n. 336. Elsewhere in chapter one and Lucca in chapter one number forty-one with Vasquez. Caj.

Sito. Navarr. If, however, adultery without its infamy and danger can bear and nourish offspring outside the home. ## ARTICLE VI. What should be restored for reputation and spiritual goods in the inducement to sin and withdrawal from religion?

And what for the office? For the remission to be made in another manner? 611 What if one should induce another to commit a sin? 612 To what extent is one bound who leads a novice or a religious person away from their religion? Chap. 2. Dub. 6.

Article 6. On restitution. 663 On restitution due to the omission of divine worship. 664 As if. I. What, if the fruit of the benefit is not received? 665 Qu.

II. What, if the duty is neglected without fault? 666 Qu. III. Is the fruit to be restored within the first six months? 667 Qu.

IV. Whether one who has omitted an office can later supply it on another day? 668 Qu. V. What if a lesser part is omitted, what about the entire hour?

VI. What, if the hour is recited without internal elevation? 670 Qu. VII. Is an excommunicated person bound to restore the fruits? 671 Qu.

VIII. Does an omittor incur another penalty? 672 Qu. IX. To whom is restitution to be made?

X. Is it true that all fruits are to be restored? And what about the simple beneficiary? 674 Qu. XI. Is one bound to the office having a slight benefice? 675 Question None

XII. Whether canons who do not assist or do not participate in the choir are bound to the restoration of distributions and offerings? Dub. 1. Whether erring canons who do not assist in the choir are to be subjected to the restoration of distributions and offerings?

Dub. 2. What are they bound to restore if they do not participate in the choir? Dub. 3. Do those who merely attend the choir, and do not chant, suffice?

Dub. 4. Those who are submissive and reciting, may they satisfy the weeping, which is merely interposed and not recited? — Resp. 4. According to what has been said, if the stolen goods cannot be restored from goods of the same order, there is no obligation to make reparation with goods of a different order. Wherefore see definition number 627. Hence the resolution: • 4.

For the restoration of fame, fame itself must be restored: when this cannot be done, you are not bound to restore it through money or good fortune, unless by a sentence from the judge you are compelled so to satisfy. It is a reason concerning the rest. That is, if nevertheless, by injuring someone's reputation, damage has also been caused to another's good fortune, it is evident from what has been said above what should be done. But concerning the injury to reputation, etc. See [the] aforementioned [instructions] n. 988. 664. — [and] 2.

If anyone has induced another to sin by persuasion or through his example, he is bound by charity, so far as he can, to recall him to a better state, but not by justice. . 2. c. 8. d. 2. n. 20. » number 4. 3. If anyone, however, has induced something through fraud, deceit, unjust fear, etc., he is bound to restore it according to justice; because each one has a right that his spiritual goods are not unjustly injured.

Wherefore, if it is damaged, that spiritual thing ought to be restored, if possible. "Here it is." » Whether, however, justice requires then to cooperate so that the other may be converted? Crioc 1. 3. p. 2. n. 344.

considers him probably held; but does not deny that the opposite is also probable according to 662. — » 4.

If anyone (even a novice) has led someone away from entering religion, although without violence and fraud, yet gravely sinned by doing so, thereby rendering it unreasonable, he is nevertheless to be advised again to enter through charity; not however either on account of justice or for his sake or for the sake of religion which as yet has no right over him. See III, T. II, C. VIII. If any person (even a novice) has led someone away from entering » religion, although without violence and fraud, yet gravely sinned by making it irrational » to do so, and thus is bound again to urge entry » out of charity; nevertheless not out of justice either for him or for religion which as yet has acquired no right against him. If anyone shall have induced a religious person to apostatize through persuasion or by some other cooperation, he is obligated by justice toward religion to make restitution; not that he himself (as some wish) should take the place of another, but that he should persuade another, so far as possible, to return and compensate the monastery for conveniences which were expected from the inheritance, goods, or industry of another.

He who by violence, fraud, or great fear impedes or turns someone away from religion gravely sins against justice; this is common according to Croix l. 3. p. 2. n. 307. with Steph. It is proven from the session twenty-five of Tridentine concerning Regulars, where it is stated that those who are excommunicated because they hinder a girl from religion. Parents sin more gravely if they impede; see the aforementioned note 335. v. Moreover.

It is more probable that he who impedes this is not bound to lead another to religion, as Croix says ibid., against which Lugo d. 9, n. 40 states. And this is more probable to be said, even though that which is opposed simply would be more novel, as . contra . This however must be considered concerning the restoration due to the omission of divine worship. 663. — From the decree of the Lateran Council under Leo X., augmented by St. Pius V in the year 1574. Beneficiaries are bound to restore the fruits of the benefit in proportion to the omission of divine office, elapsed six months from the day of possession of the benefit.

In the aforementioned council we have decreed as follows: We also have established that whoever possesses a benefice, if after six months, having obtained the benefice, fails to perform divine office, and a legitimate impediment ceases to exist, shall not appropriate his fruits in proportion to the omission of the recitation of the office and the time. Then Saint Pius V in his Constitution 486, which begins with "Ex proximo Lateranensi,"

issued in the year 1574, thus decreed: We have established that whoever shall omit all canonical hours on one or more days, shall lose all the fruits of those benefits which would correspond to such day or days; but he who omits only the matin shall lose half; and he who omits any other hour, half thereof; and he who omits a single hour shall lose six parts of that day's fruit. Although someone devoted to the choir, not reciting, may be present at all canonical hours with others, and according to statutes, custom, or otherwise pretend to have received fruits and distributions: nevertheless, besides the loss of fruits and distributions, he should understand himself to have committed a grave sin. Item, ille qui primis sex mensibus officium non dixerit, nisi legitimum impedimentum ipsum excusaverit, grave peccatum intelligat admisisse, etc. Hujusmodi autem restitutio certè debetur ante judicis sententiam, ut patet ex damnatione Alexandri VII. prop. 20. quae dicebat: Restitutio à Pio V. imposita beneficiatis non recitantibus, non debetur in conscientia ante sententiam declaratoriam judicis, et quòd sit pæna. 664. — Super hoc puncto plures quaestiones occurrunt. Questio 4.

A beneficiatus, fructus non percipiens, tenetur ad horas recitandas? Response: Si ipse careat spe recuperandi fructus, et non negligenter se gerat in illis exigendis, non tenetur. Thus. Qu. 7. Art. 9. N. 2. Cross L. 4. n. 4193.

Bon. de hor. can. d. 4. q. 2. p. 4. n. 25. et dub. 5. n 5. Reason, because it is not just that someone should bear the burden of an office if he does not receive its fruits without his own fault. Receive I. If the beneficiary justly is deprived of fruits as a penalty for some crime; Bon. l. c. cum Molf.

Axor, etc. Receive the second. If he has a certain hope of demanding fruits in the following years, as Lugo l.c. n. 5. with .c. What if the lawsuit is turned regarding the benefit? To be distinguished: if the beneficiary has not yet received possession of the benefit, Cajetanus opines. Hour 29, n. 29, and book 2, chapter 2, decision 76, note 6, with Corduba saying, he is to be held as bound to recite the office; always and verisimilitude would have him bear that sentence for himself.

Reason, because the benefactor acquires ownership of the benefit merely through the conferral, according to what is said. If to you concerning the provision in 6. Therefore, since from the day of the collation the fruits pertain to it, it is just that he himself bear the burden of the office. Nevertheless, and truly, a common and sound opinion teaches that this person is not bound to the office; for the reason is that the beneficiary is not bound to the office except by virtue of receiving the fruits; but he who has been entrusted with the benefit indeed possesses a right in it, and has

the capacity to receive possession; yet before possession he does not have the right to receive the fruits, for such a right is not acquired except through possession.

Thus on page 232, question 7. With Suarez, in his Sixth Treatise, Chapter 25, Section 3, Article 3, Number 36: "His own delay is harmful to anyone." It does not hinder that the fruits be reserved provisionally; for Habert responds in the same place that the fruits of a vacant benefice are often reserved for a future beneficiary, and yet no one says that this should hold him to the office. This benefice, however, while it is subject to litigation, is regarded as vacant, as the Council states there. And thus the opposing opinion is answered.

If however the beneficiary has already acquired possession of the benefit, then, if he himself has a morally certain hope of overcoming the litigation, he is undoubtedly bound to the office, as teach . 2. cap. 34. num. 473. . 4. cap. 29. num. 7. et 40. 5. num. 9. The Council on page 412, number 27 and 38, with ... and others commonly. Afterwards, if this hope is absent, and it be doubtful to whom the aforesaid fruits are to be assigned, because no one is bound by an obligation certain for a dubious reward. Thus [num. 37] cum [and] et Tomb. l. 2. e. 5. §. 4: n. 30 [cum and], ob quod non foret privandus talis emolumento, etiamsi litem amitteret.

If however the beneficiary wins the lawsuit, Salsus feels accordingly. Croix, himself to hold the seized fruits and distribute them to the poor. But Lugo n. 5 and n. 39 rather think that there is no obligation of restitution to him who has so negligently omitted his office without fault, whence he can lawfully retain them, just as he lawfully retains matured fruits from the time of the vacancy of the benefice, even though he did not expressly say that the office was non-existent. 665. — Questio 2. Was an omittens officium sine culpa tenaciter ad restitutionem?

The first opinion affirms with V. Second inference, who considers it probable: The second opinion however denies what is more probable, which they hold. 2. c. 34. n. 480. v. Fifthly, P. Concilii tom. 2. p. 417. n. 5. et ipse et communiori. Reason, firstly because with the cessation of guilt the punishment of restitution ceases, as is gathered from the words of the Lateran Council, which states that he who does not perform his office, and a legitimate impediment being removed, shall not produce its fruits; secondly because, as Sutetius thinks.

The clericus, n. 47, when the same is at 479, with Palud. and Rosell., (against Ang. et Cov., who nevertheless admit that this is common), such restitution is not owed by law natural, since the fruits of the benefit are

not given for the reward of recitation, but for the sustenance of him who receives the benefit; yet because of the burden of the office, no canon existed before the Lateran Council commanding such restitution. But the Church could rightly impose the omission of restitution ipso facto, and before any sentence; yet since this restitution undoubtedly is a penalty (as . prop. 26. n. 3. does not doubt), it itself demands culpability; and hence those who omit an office innocently are sufficiently excused by restitution. But you say: If the restitution of fruits culpably omitted is a penalty; why then is not a sentence at least declaratory of guilt required, as Alexander VII declared by condemning proposition 20? For (as we said there, ibid., n. 449) in all passive penalties, a sentence is required. It is responded that a sentence is not required, because this restitution is a conditional penalty according to what was said in the aforementioned note 649.

Penalty, sive quia recitatio officii est conditio sine qua non ut beneficarius fructus adipiscatur, sicut declara constitutio Lateranensis (ut mox vidimus n. 663.) dicens: Si post sex menses obtento beneficio officium divinum non dixerit legitimo impedimento cessante fructus suos non faciat. Quæritur 3. Was an omittens officium infra sex primos menses tenendum ad restitutionem? They affirm, the Sisters of the Order in their book four, chapter twenty-nine, and Val. with others according to chapter n. 2. v. Sixth infraction.

But they deny the pre-babilius number 467. Concilium tomum secundum paginam quadringentesimae sexta decima numerus tres et . The reason is the same as that which we have recently introduced, namely, because restoration bears fruit only from the law of the Church, which has imposed this penalty solely upon those who omit it after six months. However, it must be noted that these individuals are not excused from grave fault, as is stated in the Bull of Saint Pius V, as mentioned above in n. 663 and 667. — Question 4.

Whether a beneficiary omitting an office on one day can supply it on another day? All teach, and there is no doubt, that this cannot be excused from mortal sin, as we have said and as is also contained in the aforementioned bull of St. Pius V. A doubt arises whether by such a substitute he is excused from the restoration of fruits? The first opinion affirms what Molf. in tom. 4, tr. 5, c. 5, n. 7. 16, c. 2, punct. 4, n. 65 holds, who citing tract. 42, resolv. 24, asserts and calls probable q. 4, p. 2, n. 5.

Reason, because in such a case he has already rendered an equivalent, just as if the chaplain were to omit mass on one day, it can be easily supplanted by another. The second opinion, however, which I adhere to, denies this; and this is held by Bonac. f. c., art. 9, num. 2, can. c. 4, qu. 7,

r. 2, with the aforementioned reference n. 64. Similarly P. Concina, t. 2, p. 420, and Leandr. who says this must be entirely held, and Croix l. 4, n. 1209, who does not consider the contrary probable. Reason, because the burden of office is assigned to a day, hence he who does not fulfill that, cannot fulfill it on another day; and this seemed to be the mind of Saint Pius V when he decreed that those who do not perform their canonical hours either one or several days should not reap their fruits. Si Pontifex oblivionem non fecisset discutere, sed negligens fuerit, per hoc verbum significavit quod non lucrari fructus qui uno die officium intermitteret, etiamsi alio die supplereret; quia licet dicatur horas non omisisse, nec tamen possit dici quod non intermiserit.

Hence well argues Roncaglia, how he who on one day has already lost the fruits of his benefit can on another day recover them? I all the less approve that which they imply, namely, that the beneficiary omitting the office can make up for it with other pious works. Neither do I assent to what Roncaglia says, namely, that when poor people and even souls in purgatory come to us, if the beneficiary applies prayers for them, he can be released from restitution: I do not assent, I say this because the Pope has absolutely imposed on those who omit restitution the loss of its fruits. 668. — Question 5. Whether one who omits a lesser part of an entire hour is bound to make restitution?

If the omitted parts do not constitute a serious matter, it is commonly held that no restitution should be due, neither venially; even if the fruits corresponding to those parts extend to a great quantity. Reason, because thus the usage of the choir demands it, and because such a restoration has been imposed upon those who omit an entire hour according to Saint Pius V; but he who omits a minor part cannot be said to have omitted an hour; so 4th book, chapter 3, note 13. Bonac. d. 1. qu. 5. part. 2. n. 11. ..16. c. 2. punct. 4. n. 56. et P. Concina, tom. 2. p. 419. n. 8. in fine. And they think this to be true.

December 2, page 7, number 6. With Fillius. But notwithstanding these things, it seems to me more opposed, what they teach in book 4, chapter 30, note 13. P. Concina, l.c., Bonaventura de horis canonum d. 1, q. 5, p. 2, num. 15: cum restitutio fructuum pro ratione omissionis officii restituta fuerit ab Lateranensi praecepto absolute, ubi nota non dici ibi pro rata omissionis cujuslibet horae sed officii; ergo ex concilio omittens partem notabilem officii jam tenebatur ad restitutionem. Later S. Pius V issued his bull, wherein he did not at all alter that constitution of the council, but wishing to provide expressly, as he said, he merely defined how much was to be restored for the omission of each individual hour; yet from this definition improperly it is inferred that Bonifacius wished to exempt one

who omits a notable part of the whole office from the restoration imposed by the council, even though no notable part of any single hour is omitted.

We reject all the more thereafter with N. 55. Bonac. et Tolet.), namely not to be held bound to restitution, he who omits a notable part of some hour: for he who omits a notable part truly does not recite the hour, just as he truly omits the Mass who does not hear its notable part. 669. — You ask 6. Is the beneficiary bound to restoration who recites the office without due attention? He who is externally and voluntarily distracted certainly does not fulfill the office, and is bound to restore it.

It is doubtful regarding one who is distracted internally; concerning this there is great question, about which we shall discourse in book 5, note 477, where we will say that the probable opinion is that he does not satisfy the obligation. But since we cannot yet deny as improbable the opposite opinion, here we say that the beneficiary is not bound to restore the fruits and goods, provided he has always received them in good faith; because, given a certain law by which he himself possesses his own goods in good faith, he is not bound to restoration unless he be certain of the obligation to restore. The great rigorist prince Prosper Fagnanus imposes a serious scruple on confessors absolving the penitent who does not wish to restore according to the probable opinion of his confessor, because the judgment of such a confessor as his judge, the penitent as the defendant should comply with. But a greater scruple seems to me and to countless other doctors, even supporters of strict judgment, to afflict confessors condemning penitents to restitution, who on one side have a probable opinion excusing them from restitution, and on the other have a certain right of possession over their goods, which they should not be deprived of unless it is certain that there is an obligation to restore according to what was stated in no. 547.

Moreover we have said in lib. 1., n. 84., and shall explain more fully in lib. 6., n. 604., that a penitent who has a probable opinion cannot be denied absolution, as is commonly taught, and this is also acknowledged by many among the probabilists whom we have mentioned and referred to there. Neither hinders it to say that the penitent should conform himself to the judgment of the confessor; for the confessor is not a judge of controversies, as he is the Supreme Pontiff, but merely a judge of the disposition of penitents and of satisfaction to be imposed, as is stated in the treatise on Penance, c. 5: "Jesus Christ... left His priests as vicars of Himself, as rulers and judges before whom all mortal crimes should be referred..., who by virtue of the power of the keys shall pronounce a sentence of remission or retention of sins." It is evident that the priests could not exercise this judgment without a known cause, nor could they have preserved equity in

imposing penalties if, merely in general and not specifically and individually, they had declared their own sins. Therefore it is evident that the penitent ought to follow this judgment of the confessor merely insofar as he brings his sins before him and accepts penance.

On the contrary, after confession, the penitent has a certain right to absolution, which cannot be denied him, unless he is otherwise indisposed; nor can he be called indisposed because he does not follow the opinion of the confessor, for it certainly does not pertain to him to reject opinions that wise men approve; but only to judge whether the penitent has formed a right conscience or not. But Fagnanus will insist: these are probabilistic principles. I do not know whether they are probabilistic or antiprobabilistic, since even among the probabilists those very things are followed by many. This one thing I know, that in all sciences a proven rule exists, to follow principles more widely accepted by the wise, as these which are found everywhere held by writers conspicuous for doctrine and piety, who have published their volumes in the face of the Church; to whom adhering seems safer and wiser to me; for it is taught from the unanimous consent of theologians (says 670. — Question 7.

Whether an excommunicated person is bound to restore the fruits of a benefit? It is certain that an excommunicated person be held to return the fruits of the benefice during the time of collation, which was null. 7. art. 9. num. 7. Secondly, if after the conferral [of the benefit] he falls into excommunication. Thus. 4th tractate, 5th question, page 2, chapter 2, number 9, part 2, article 3, section 5.

Question 4. . 2. p. 44. n. 4. . lib. 3. d. 54. n. 42. . c. 3. funct. 40. n. 445. cum Cov. Fill. Sayr. etc.) And indeed more probable: reason, because the punishments, which require an action, as we said in lib. 4. n. 148, the defendant is not bound to undergo, unless after the sentence. And thus the text seems to signify in e.

Pastoralis 53. § Verum. de Appel. ubi dicitur: Those who are deprived of ecclesiastical merit have their communion with the Church denied. But to those who are deprived, he says: rather it indicates an expulsion which is carried out by a person, as the Glossa also explains. All the more, because the Pontiff responds to the question posed: whether a cleric who has been excommunicated could deprive himself of benefits from ecclesiastical judges. This judgment, however, proceeds, if the beneficiary himself, or through another, has already fulfilled his duty.

If however he were absent from the choir by reason of unjust excommunication, he could receive the fruits of the benefice, and even

distributions, as they say, 8. c. Sa, Fill., et Ugol. concede to these distributions; but commonly and much more probably 674. — Quidam obiter 8. omitting further restitution, what other penalty would he incur? Incurrit poenam privationis beneficii, si admonitus saltem bis post sex menses officium omittat intra quadraginta dies ut legitur in capite xl ex concione. Lateran. 672. — Question 9. omitting to whom he ought to make restitution? Resp. to the poor, or for the benefit of the fabric, as decreed by ex Decr.

Pius V, sive ecclesiae, sive domui beneficii, sive in augmentis agrorum, ut a. 9. n. 44. But not otherwise (he says, lib. 2, p. 425, n. 24. By the term "paupers," are understood the poor of any place, and they also understand the dead themselves. And even the cleric himself can apply these fruits to himself, if he is truly poor, as Palaus states in tract. 7, d. 2, p. 7, n. 42, cum ex communi d. n. 44, at the end.

However, it is excused if he omits the office knowingly, being able to retain the fruits on account of poverty, as wisely observe. They add Palaus tract. 7. d. 2. p. 7. n. 44. cum de hor. can. c. 2. punct. 4. n. 60. in fin. cum . Reg. Fill.

Quintan. and commonly, a beneficiary can make restitution if any other pious works for the dead have been omitted in lieu of equivalent recitation, namely (as explained ibid., n. 66) hearing the Sacred Scriptures, flagellation, Incarnation in the ineffable mysteries, and similar; but to this see above n. 667. Question 4. at the end we did not rejoice. It seems that only what Concina allows on page 427 should be admitted, namely, the possibility of restoring the fruits of penances, so that masses may be celebrated or other suffrages applied for the dead. Question 40. Whether a beneficiary ought to restore all the fruits and the offices which he has omitted?

They affirm that, Sed., tom. 4., l. 2., c. 2., d. 83., n. 3. Soto just. l. 16. qu. 5. art. 6. c. 34. n. 133; c. n. 13. 59. cum Ratio, tum quia bulla S. Pii sic recepta est et sic licata usu, utpote conformior aequitati naturali; tum quia durum est ut eodem modo Episcopi, parochi, et capellani qui non alia onera, ac simplices beneficiarii sint obligati. Wherefore they say that the parish priest is bound to restore either the third or the fourth part of the fruits, by reading for others the offices with which he himself satisfies other obligations: canons receive a sixth part: those having a chapel, half or a third part: (for the chaplain is bound to the office, whether any chapel endowed or movable at will be erected by the bishop and his authority, it truly is a benefice, even if conferred by him alone without such authority of the bishop's. Thus it is said in Decretum, distich. 84, n. 4: "The bishop

and parish priest are to be held only to so much as that part," which is stated at the end of lib. 20, and in fin. de horis can., q. 3, a. 3, n. 8, in fine.

Canonical to such an extent, that even § 8. at the end of the same treatise on the simple beneficiary? Correctly . d. l. de rest. l. in fine says, to hold him bound to all fruits: because the burden of bearing it, living chastely, etc., is compensated by clerical privileges. Atta-Henr. apud . loc. dicit, teneri tantùm ad tertiam par- ratione aliorum onerum. And he asserts this to be a common remark among Manuel and Medina, whose opinion he says.

He said this opinion deservedly: "De Robus et Arduis," II, c. 34, n. 177, laxam. Whereby it is rationally limited to those beneficiaries who besides canonical hours have other burdens, according to proportion. 1. — Question 44. Whether one having a slight benefice is bound to office? concerning canonical hours c. 2. punct. 3. §. 5. n. 48. cum . Pius V did not exclude this. They nevertheless deny it in the treatise of Moya, tract 2, on relations, discussion 2, question 4, note 8.

Malder. who testifies that this is common to the recent ones: and the same they feel. 2. c. 34. n. 469. 2. d. 66. cum. Vega, apud n. 46 (quamvis sentiant tenéri hunc beneficarium recitare saltem Dominicis et diebus festivis). Ratio, quia ex c. Is cui 49 de praebend. in 6 in jure tenue beneficium non reputatur pro beneficio; in praefato enim canone habens tenue beneficium non excluditur ab alio beneficio obtinendo, cum ibi prohibeatur ne de beneficio provideatur tantum obtinens aliud beneficium sufficiens: Is cui (verba textus) conceditur auctoritate apostolica possit uni personae in sua vel alia Ecclesia providere; alicui aliud sufficiens beneficium obtinenti providere non potest. The Gloss adds thereunto: Therefore, if it is not sufficient, otherwise it is. Then below he brings forth the reason: because the one who has been beneficed is not fit for it, and by common law a beneficiary is not commanded to perform the duties of the benefice according to c. Quia in tantum, de praeb.

Therefore having a slight benefit, if one is capable of benefiting, thus he is considered in law as not having been benefited: and consequently he is deemed excused from the obligation of the office. It is asked what kind of benefit is judged to be slight? I say that one should not listen to those who assert that such a benefit is to be judged as slight when it does not reach 20 or 30 n. 7. Sporer de hor. can. c. 4. n. 27. tit. n. 424. 2. c. 5. §. 4. n. 24. et c. 2. n. 46. cum Mald. ac aliis communiter censent probabile, tenue existimari illud beneficium quod non pertingit ad tertiam partem sustentationis.

And adheres Sanchez Cons. l. 2. c. 2. dub. 67. n. 4, with Suarez, supposing that this slight benefit which does not reach to a third part, or no more inclines towards a third beyond a fourth part. The sustenance, however, is rationally said to be measured according to the diversity of patrimonies which are customarily assigned to clerics in different places. Hereupon Soto, in matters of obligation regarding the office of beneficiary, states that he receives annually eight golden ounces. But .

But I utterly agree with this: for it is the common opinion at Croix, lib. 4, cap. 4195, that the beneficiary in no way can be excused from the third part of the sustentation. The same is rightly considered to be stated in Croix n. 4196 with Vasq., namely, if there is doubt whether it is a slight benefit; because, since the benefit is certain and slightness excuses doubts, possession is reckoned as pertaining to a benefit, and consequently to an obligation of office. Lugo justly adds in R. Mor. dub. 6. n. 5. and c. n. 26., that neither should the beneficiary be excused if the benefit was made due to his own fault, being deemed slight; nor if he himself expects to receive richer fruits in the future, for then one year is compensated by another, contrary to Palauin tom. 2. d. 2. p. 4. §. 2. n. 18. Likewise Croix adds ibidem to be held to the office, who accepts the benefit with the burden of paying all the fruits for the pension.

Thus also, if he does not produce his fruits, because he does not remain, as Croix says in the same place. However, Buscemi and others limit this; but Croix rightly rejects this in the same place with Azor, for if he wishes, he can receive the fruits. Question 42: Whether canonists who do not assist or do not chant in choir are bound to restitution of distributions and prebends? Here are more doubts to be discussed. It is certain that clerics of cathedral and collegiate churches are bound to chant in choir according to c. 1 de celeb. et c. 42. And they are bound to assist daily, unless otherwise instituted or custom dictates; or necessity compels that the office be performed elsewhere outside the church, and permission of the Bishop is present when access thereto is permitted, as stated in 9. n. 14.

But Bonaventure probably thinks so, to whom this adheres; for the office is considered morally in the sacristy as if it were recited in the church. But there is doubt whether grave sin is committed by canons who do not assist in the choir? They deny more ancient doctors, as in no. 14. Sylvest. v.

Hour q. 11. Cajet. idem verbum sectio quinta ibidem articulus anglicanus. Vald. Reg. tr. 16, c. 4, punct. 4, n. 2: etiam quia de hoc non est præceptum expressum, etiam quia obligatio assistendi choro oritur ex distributionibus; ideo, cum his canonici renuntiant, omni obligatione se liberant. But rather Suarez 1. 4. c. 17.

Bonaventurae dissertationis decima quarta quaestio quarta pars secunda. P. Concina tom. 2. p. 510. n. 4. c. n. 14. part. 2. cap. 2. art. 8. sect. 5. c. n. 3. cum Vasq. Reason, because according to chapter 92, if a cleric subject to deposition does not recite in his own church; also because the obligation to assist does not arise from distributions, but from the primary institution of the benefice itself; for Tridentine session 24:42, speaking about canons, decrees: All... shall be compelled to institute themselves in the choir to chant the name of God reverently, distinctly, and devoutly. We have stated notably 4., that even if a canon absent per three or four days, it is common opinion that he does not commit grave sin.

Thus 4. 1. 876. with Vasquez, and 4. c. 43. n. 8. t 9., who nevertheless said that the aforementioned opinion does not seem certainly improbable, but rather he is unwilling to interpose his own judgment. We said 2. beyond the permitted time; because Tridentine allows canons, as well as bishops, to be absent three months. However rightly teaches St. Thomas 2. 2. q. 94. rt. 2. ad 3. which follows. c. verb. I say this thirdly, with Valens and others, that bishops are not obligated to choir; firstly because custom so ordains; secondly because they ought to attend to greater affairs, which do not tolerate the assistance of choirs.

It is doubted what canonicals are bound to restore who do not participate in the choir? It is certain that they themselves are not able to profit from distributions, even if other associates remit them to them; as stated in De Reform., c. 42, where it is said: Distributions, who have been present at the fixed hours, shall receive them; the rest, by any collusion or exalted remission, shall be denied this care. Note the remission through high authority: for as Croix rightly points out in 1. 4. n. 877 and p. 523 n. 4., if those portions have already been supplied to the presentees, these can lawfully be given to the absentees; provided that this is not done through a contract and to the detriment of the law, as he says there. Croix because this would be a palliated collusion.

But those who are absent on legitimate causes are not deprived of distributions about which we treat in 1. 5, ex n. 430. This concerning distributions. Et verumque si non assistent, tenentur tamen fructus praebendae restituere? Thus it is held in c. Primo: each one shall be deprived of half the fruits, which he has made his own through reason and also through praebendae and residence.

Si vero iterum fuerit idem usus negligens, privabitur omnium fructuum. And as contumacy increases, proceed against them according to the constitutions of the sacred canons. According to the sacred canons, as they

say in point 1, no. 9, those are stripped of their very benefits. This they further assert, namely, that it should occur commonly only after a sentence: but otherwise it is to be held today, as we shall see in the following doubtful case.

It is doubted whether the choir merely present, and not singing, satisfy, and thereby earn the canonical distributions? They affirm: In the second part, question 99, article 2, clause 2, doubt 3, with, and Panorm. And Bonaventure consents in Hor. de hor. can. d. 1, q. 3, p. 2, § 4, n. 18, and with . . and . . But today, with other matters omitted, the cause has been concluded in the bull Cum semper oblatas (see at the end of the appendix concerning the Romans n. V.), where our Holy Pontiff, after asserting that the aforementioned opinion is absent from the mind, concurs.

Tridentine, and having been repeatedly condemned by the congregation of its own council, says: Indeed, it has not at all seemed to us that any particular title would persuade one or another Church to think itself satisfied with its office through simple attendance in choir without the chanting of divine psalms. But, unless there be present to them the apostolic privilege, neither presumpted nor abrogated, but legitimate and valid, by right and merit it is to be feared, lest those who conduct themselves thus make little of the fruits of distributions due, and consequently be held bound to their restitution. From which word rightly infers Canina tom. 2. p. 518. n. 22., that so severely condemned opinion is thus rendered invalid, that it henceforth cannot be approved as such; for such words import a dread of the practice, with which certainly one may not proceed. But whatever anyone may have said concerning the aforesaid bull, the same applies to the Holy See.

The Pontiff avoided all doubts from the new Breviary, which he directed on the day of the 19th. January in the year 4748, on page 520, number 29). Our Pontiff having chosen to extirpate from the accustomed practice of canons, which is only of interest to the choir, thus said: Therefore we beseech and reproach thee, my beloved Son, that not only this kind of abomination and corruption, which the discipline of the Church abhors and anathematizes, and which is contrary both to the ordinations of the ancients and also to our own constitutions, thou wouldst diligently root out and extirpate: but also gently and firmly admonish them, that henceforth they may attend to what becometh and is held fitting for the choir, and assist therein with all due piety, attention, and vigilance, so that they may sing or chant with the rest in a perfect manner, striving and contending therewith. Then by these same edicts and let you know (wholly through our aforesaid letters in the form of a Brief which we declare and command you to decree and establish as we have indicated in our said

constitution), that your canons and their successors who are interested and assist in the choir, but do not fall into carelessness, should in no way derive any fruit from prebends and distributions, and thus be liable to restitution and henceforth be and remain so. Whereupon by this Diploma finally it is determined that canons either do not interest themselves or do not chant or sing in choir; moreover they lose their daily distributions and also do not derive any fruit from prebends, and are subject to restitution.

It is doubted whether those who submissively recite psalms, and hear another part, satisfy the choir? When speaking generally about the choir, whether these satisfy the office, there are two opinions. The first opinion, which Cajetan holds. Summary fifth.

White, at the end, Arm. same, v., n. 22. Navarr. in the 40th chapter, note 80, and others quoted in the 46th question, chapter 2, punish number 3, note 25, saying that they do not satisfy, because they do not communicate with other singers. The second sentiment, however, will be found very probable and more common; and they hold to this, namely, Sameh. Cons. tom. 2. l. 7. c. 2. dub. 44. n. 2. . 1. c. 34. dub. 33. n. 484.

Suer. tom. 2. l. 4. c. 42. n. 8. Filter treatise 26, part 6, note 495. Concil. tom. 2. p. 543. n. 9. Bon. d. 1. q. 3. p. 2. §. 1. n. 46. . e. cum Sot.

When speaking about the choir of canons, does the choir itself satisfy its obligation by reciting submissively and thereby earn the distributions? It affirms with others. But commonly and justly do all deny this. Concina p. 513, n. 9, part. 2, cap. 2, art. 8, sect. 5; and Bonac. l. c., n. 17, cum . . Reason, because distributions should be given only to those who serve the choir; but of the choir's service, as is found in Clement 1 de cel. miss., it consists that clerics convene in the Church for the office of psalm-singing. Therefore those who do not sing but recite the office in a subdued voice cannot be said to serve the choir; yet Filliastre and others hold that canonists reciting thus can at least receive a median part of the distributions: but our Holy Pontiff Benedict says otherwise.

XIV. ut mox supra vidimus in praecedenti dubio, expressè declaravit, canonicos non cantantes vel psallentes, non solùm amittere omnes distributiones, sed etiam teneri ad restituendos fructus praebendae. Doubt is cast. Canonicos, portionarios, et similares possint inservire choro per substitutos, vel alternatim unus pro altero. They deny § 3, n. 18, with Zerol.: But all are divinely compelled per se, and not through substitutes, to perform the offices.

Hence it is said that this is forbidden, even if there exists a custom, or a statute permitting it, from the declaration of the S. Congr. 25. July 1570. If some statute has been enacted whereby canonists may serve through substitutes or alternately one for another, this reason shall not be held valid, because it is contrary to the council. Ventriglia concedes only that, if there is a legitimate impediment, for instance one of infirmity or permission of absence, it may be done.

Fagnan however remarks in cap. Cùm omnes, de const. n. 28. Monachel. . ti. 13. Form. 2. n. 64. et Matthæus. The Office § 1 n. 9 declared the Sacred Congregation of the Council, that a Bishop (where there is custom as noted by Monachus) may grant the faculty to chapter members mutually to substitute for each other in service both to the Church and to the hour, provided that they not be substituted during those times when bound to serve the Church, and also that the Bishop take care lest this faculty of substitution be abused; it is thought especially if such substitutions are too frequent.

But moreover, Fag. has also written and declared this. The Decretal has its place here only among those present. Since then it had been doubted whether he should be considered absent who spent the night outside the walls of the city where the cathedral is situated, at a distance of about a mile from the suburbs, so that the canon could conveniently attend to his duty; the Sacred College responded that he should not be considered absent. He collects all these declarations and refers to Cardinal.

Lambertini Notif. 107. n. 17. et 18. Chapter 2. Dubium 7. Article 1.

On restitution. SEVENTH DOUBT. BY THE CIRCUMSTANCES OF RESTITUTION. ARTICLE I.

At what time, place, and manner should restitution be made? 676 When and where is restitution to be done? 678 Should restitution be made with the thief's property? 679 When does the delay in restitution constitute a sin? 680 What is the debtor bound to do if the creditor suffers damage due to the delay? 681 Is the debtor absolved who, although able to make restitution, wishes to delay it? 682 Does the debtor who is absolved and yet does not restore the pledge, give security for it? And whether the confessor ought to admonish one who is in good faith and from whom he foresees that an admonition will not prove fruitful regarding restitution? 683 How many sins does he commit by negligently failing to make restitution? 676. — « Resp. It must be restored as soon as possible, and in such a manner and at such a place that justice and the interest of the one damaged may require, and that it can be done conveniently and morally

without causing serious inconvenience to anyone in their own affairs beyond what is due. See Lamm. this in lib. 3, tract. 2, cap. 10.

FUL. translation 32, order 4, question 11. Unwind resolution: "1." He who is not able to restore openly conveniently, let him do so secretly; and he who is not able per se, let him do it through an interposed person, for example.

» confessor. » (What if the confessor does not restore it? See to be said according to no. 704. Question NoneIV.) 677. — "2."

A possessor in bad faith, for example, a thief, should transfer to that place what would have been held by another if it had not been stolen, destroyed, or inequitably detained, provided that the expenses incurred in preserving or transferring it be deducted. Excepting the case where transfer would require more than the thing is worth, it should generally be restored to the poor or for pious uses, unless transferring it would entail greater expense; for then it could often be restored out of the lord's presumptuous mind. The question arises whether the thief is bound to restore the thing to the master even at a greater expense than the thing itself is worth? They affirm in Navarr. etc. according to punct. 40, n. 195.

But they deny it with D. L. and Soto, etc., with. Bus. hic. See what was said above in notes 597 and 598. 678. — “4.” The possessor of good faith satisfies if he restores it to its place where he possesses the thing. loc. cit. 4.

They are due according to the contract at that place and time which is mentioned in Volume II elsewhere. But comm- p. 513. and Bonae fidei possessor concilium secundum C canonem ' ' '

[reasons], if immediate restitution were made. 259. with Lug.

It is asked here in Article 4: Whether the debtor should be absolved before he makes restitution. The first opinion states that one can be rightly absolved well even in the second instance, not only in the first, if he gives true signs of sorrow and purpose. Thus in question 4, article 5, number 2, where it is said ibidem number 258, with P. I entirely agree with the second opinion, which P. Concilium holds in volume 7, page 85, number 25: that regularly a debtor should not be absolved until he has first restored what was owed, provided such restoration is morally possible; just as a concubinarius should not be absolved before he casts off his concubine, for experience sufficiently attests that debtors rarely restore after absolution, just as concubinarii rarely dismiss their concubines. Wherefore S. 6. after 4.

Dom. Quadr. rectè monuit: Prius igitur vada et concubinam ex domo pellat, pecuniam alienam restituat.... et tunc ad confessarium redeat, ut absolvatur. However, the Council says well in the same book, chapter, and number 24, that if a prudent confessor shall first discover a debtor who is sincerely prepared to restore what he owes as soon as possible, and restitution cannot be made promptly, then it can rightly absolve him for the first time; and they most probably admit this also, Lugo in just. d. 20, n. 243, even for the second and third times, if such circumstances occur that the confessor should content himself with the mere purpose of restitution. It is asked whether, if a penitent be in good faith and the confessor foresee that the admonition regarding restitution will prove minimally beneficial, he should admonish him?

Concerning this doubt, see what is said in the treatise on penance, lib. 6, cap. l., n. 614, where we have already approved the negative part with Lugo and others commonly against a few: for if the confessor should perform his office with great prudence, how would he prudently act by warning the penitent, foreseeing that the latter will suffer harm to his soul, and conversely, that damage to the creditor should not be removed. 683. — It is asked further, 3rdly, how many sins does a culpable negligent person commit in failing to restore with due care? The first opinion, which Salmeron considers most probable, holds that one commits so many distinct sins as there are occasions for restitution, and whenever he proposes not to make restitution; rather, whenever through sleep or by other distractions he is diverted. Thus in the same place, paragraph 14, number 262. The second opinion teaches that he commits but one sin, although for a whole year and more it persists in the same will not to restore.

Book 4. Treatise 5. Undecimo-principio-de-la-décima-ley. Reason, because such a sin, even though it may be physically interrupted, is not considered morally interrupted unless it is retracted, for whenever the evil will remains virtually always present in the state of retention.

Ita Lug. depenit. d. 16. n. 549. eum. Tameret. c. n. 2 6 4. cum P. et. Hence they say, suffice it to confess, to promise, and to mission the restitution; the fifth penance expresses this, whereby the duration of temporal punishment is not such as if there were circumstances aggravating the case. Both opinions are probable, but the second seems more probable.

Videl. 2. de peco. n. 4. Articulus II. In quo ordine restitui debeat? Si cuifaciendae restitutio, sere sextet? An pretium reivenditae possit solvi creditoribus venditoris? An pecunia furtica, immi cito propria, restituenda sit ante aliam debitam? An prius restituenda debita certa, quominus certa? An prius solvenda debita ex delicto, quam ex contractu? Quæ aliqua debita prius solvenda? An semper praeficiendum creditore hypothecearii anteriorem, etiam ex hypothecata citam? An antem personales anteriores? 6 9 1 An praeferi possit reditor personalis pauperior?6 9 2 An prior exigens?6 9 3 An creditor, cui inter plures facta est solutio, possit am retiner a6 9 4 An famuli possint acciperesalarium de debitis gravato?6 9 5 An uxor et fili alimenta? It is certain that no order should be observed in discharging debts when the debtor can pay all; but when he does not have enough to pay all, let what remains be left for his heirs, observing the following rules: 1. The creditor has something due to him according to his title, whatever it may be, whether by theft, or by deposit, or by finding, etc., he should first restore it to its owner, or if not restitutable, provide equivalent compensation to the poor.

Similarly, if bought on credit, until the price is paid in full, it shall remain so. . Good. Question 3. Part 2. This manner is limited, 4 and 5, d. 2, contra Bon., etc., unless the vendor has received a remission of guilt or a pledge from the buyer. "6 8 5. - - It is asked whether, among vendors and redeemors who are present, the former should be preferred to other creditors and purchasers?"

It is certain that the vendor who has neither received the pledge nor the pawn, nor the security for price, ought to be preferred, since then he retains the dominion of the thing itself. What was sold, from the contract of purchase and sale, according to the Institutes, chapter on contracts. Div. See. c. 4. punct. 4 2. §. 4. n. 2 3 4.

And see infra chapter 7, section 9, paragraph 6, points 3 and 4. It is certain that whoever has received a pledge or a bond from any seller does not

have any claim to prelation, who at once is not secure concerning the price. Lamentation. 2. O. 4. 5. The question arises whether when the seller has delivered the thing and received from him a price so great that he trusted in his faith?

The first opinion states that then it should be preferred to consider the seller as having acted; and this they hold according to c. n. 232. cum (where they also cite Lessius, but not well, for Lessius 1. 2. c. 15. dub. 2. n. 11., where it is cited, speaks of a case in which neither faith nor the price has been given). The reason is, first, because this is required by natural equity; secondly, because although the dominion over the thing has been transferred in that case, yet it was nevertheless transferred subject to the condition of payment of the price; hence such a thing remains hypothecated for the solution of the price. The second opinion, however, is more probable, those who defend it being Molinaeus . d. 536. sect. 5. tract. 2. c. 41. n. 2. 1. p. 18. §. 14. n: 5. Lugo, Decretum, lib. 20, sectio 2, num. 17, quandoque cum Vasquez. P. ; it is not held by any right that the thing hypothecated to the seller remain so until he is paid the price: otherwise the buyer would not be able to dispose of it as he pleases, which no one says. 686. — Now, is money obtained through theft, mixed with his own property, to be repaid before other debts?

They reasonably affirm . and Croix 1. 3. p. 2. n. 375. because the entire heap is specially obligated to the Lord from whom the money was taken. See what is said in no. 499. v. Note. 687. — "2. If restitution is to be made on account of an unjust acquisition, the certain things, that is, those whose lords are known, should be restored before the uncertain ones; because the former are owed by right of nature to their lords, but the latter are owed by positive civil law to the poor.

Although it is probable that the opinion set forth in Bus. ibid. no. 230 and Croix, I. 3. p. 2. n. 377—that certain debts should be restored before uncertain ones—is correct; nevertheless, it is also probable that if the debtor cannot restore both kinds of debts, then restoration should be made proportionately even to the poor for uncertain debts. They hold thus and consider it probable; Tapia, 20, sect. 1, n. 5, considers it most probable. The reason for this is that prelature does not owe creditors who are certain neither by positive law (which is certain) nor by law of nature, as Businius supposes. But equally by reason of natural law the poor succeed to the place of uncertain creditors, as Cajetan says in 2. 2. q. 62. art. 9, and Covarruvia in punct. 11. §. 3. n. 210.

Such is the presumed will of creditors, that what cannot be restored to them themselves may be restored to the poor for their very souls' sake.

688. — « 3. Restitution of debts honestly contracted is to be preferred before usury; for in these [debts] the lord will not have been simply unwilling. It is asked whether debts due from a crime are to be paid before debts due from a contract? Three are the opinions among point 12. § 1. ex no. 234. which they themselves call all probable and safe in practice.

Reason, because such—nevertheless n—what force—thought with teni dir si 1 1 1

merces operarii solveretur.

Art. 1104. Whose privileges are reviewed in article 1101, even the debtor's immobile goods affect them when mobile goods are deficient. Art. 1105. Now if privileged creditors, insofar as mobile goods are deficient, and with privileged ones regarding immobile goods, contend for solution, they will be solved: 10 Expenses according to article 1101; 30 Debts according to article 1105.

Art. 1106. That privileged status regarding immobile assets, when brought to effect, renders the incurred debt operative through registration in the Hypothecary records. Art. 1107. Debts are considered to be related according to Article 1101.

Article 1114. A hypothecary contract is, by which an immovable thing is obligated to the creditor as security for a debt. Art. 1115. There is one kind of legatees, another judicial, and yet another commercial.

Article 1116. This triple hypothec follows the order among creditors only for three days from the inquiry in the registers of the hypothecary conservator. Art. 1118. No se requiere inscripción: 1 por razón de gestión de los bienes del menor y del interdicto; 2 en las mediaciones sobre inmuebles para la ejecución y convenios matrimoniales.

Art. 1117. Creditors hypothecated on that same day are of the same order, since the inscription is not counted by hours but by days. Edit. to others. But commonly and rightly they deny this; cf. Concina p. 513 n. 9 part. 2 cap. 2 art. 8 sect. 5 et Bonac. l.c. n. 17. Because, the reason is that distributions should be given only to those who serve in the choir; as it is stated by Clement 1 de cel. miss. in this lies, that clerics may convene in the Church for the purpose of singing psalms.

Therefore those who do not sing but recite the office in a subdued voice cannot be said to serve the choir; yet Filliastre and others hold that canonists reciting thus may at least receive a median part of the distributions: but our Holy Pontiff Benedict says otherwise. XIV. ut mox supra vidimus in praecedenti dubio, expressè declaravit, canonicos non cantantes vel psallentes, non solùm amittere omnes distributiones, sed etiam teneri ad restituendos fructus præbendæ. Doubt is cast 5. Canonicos, portionarios, et similares possint inservire choro per substitutos, vel alternatim unus pro altero.

They deny § 3, n. 18, with Zerol.: But all are divinely compelled per se,

and not through substitutes, to perform the offices. Hence it is said that this is forbidden, even if there exists a custom, or a statute permitting it, from the declaration of the S. Congr. 25. July 1570. If some statute has been enacted whereby canonists may serve through substitutes or alternately one for another, this reason shall not be held valid, because it is contrary to the council.

Ventriglia concede solum hoc, si sit legitimum impedimentum, v.g., infirmitatis et absentiæ permis-sæ. Fagman however remarks in cap. Cùm omnes, de constit. n. 28. Monachel. . tit. 13. Form. 2. n. 64. et Matthaeus.

The Sacred Congregation of the Council in its section 1, number 9, declared that the Bishop (where a custom exists as noted by Monachus) can grant the faculty to chapter members mutually to substitute for each other in service both to the Church and to the hour, provided that they not be substituted during those times when bound to serve the Church, and provided that the Bishop takes care lest this faculty of substitution be abused: it is thought especially if such substitutions are too frequent. But moreover, Fag. has written and declared. The Decretal has its place here only among those present. Since then it had been doubted whether he should be considered absent who spends the night beyond the city walls, where the cathedral is situated, at a distance of about a mile from the suburbs, whence the canon can conveniently go to his duty; the Sacred College responded that he should not be considered absent.

He collects all these declarations and refers to Cardinal. Lambertini Notif. 107. n. 17. et 18. Chapter 2. Dubium 7.

Article 1. On restitution: DOUBT VII. BY THE CIRCUMSTANCES OF RESTITUTION. ARTICLE I.

At what time, place, and manner should restitution be made? 676 When and where is restitution to be done? 678 Is restitution to be made with the thief's expenses? 679 When does one sin by delaying restitution? 680 What is the debtor bound to do if through the creditor's suffering damage results from delay? 681 Should he who can make restitution but wishes to delay, be absolved? 682 Can a debtor be absolved although he has not yet made restitution equivalent in amount? And whether the confessor should remit the debt of one who is in good faith and whom he foresees will not benefit from admonition? 683 How many sins does the negligent committer of restitution commit? 676. — « Resp. It ought to be restored at once, and in such a manner and place as justice and the interest of the one damaged require, conveniently and morally, without causing grave inconvenience which anyone would suffer in his own affairs beyond what is due. See

Lagnm. this l. 3. tract. 2. e. 10.

Complete. translation 32. chapter 4. question 11. And you have resolved: "1." He who is not able to restore openly conveniently, let him do so secretly; and he who is not able per se, let him do it through an interposed person, for example.

» confessor. » (What if the confessor does not restore it? See to be said according to no. 704. Question NoneIV.) 677. — "2."

Possessor malae fidei, v.g., fur, debeat suis sumptibus ad eum locum rem deferre, ubi alter eam habiturus fuisset, si non fuerit ablata, destructa vel iniquè detenta; deductis tamen expense, quas alter eam servando vel deferendo debuisset facere. Excipe, nisi transferendo deberet plus impendere quam res valeat; tunc enim plerumque ex praesumpta mente domini posset restituire pauperibus vel in usus piis. p. 1. The question arises whether the thief is bound to restore the thing to the master even at a greater expense than the thing itself is worth? They affirm in Navarr. etc. according to punct. 40, n. 195.

But they deny it with D. L. and Soto, etc., with. Bus. hic. See what was said above in notes 597 and 598. 678. — “4.” The possessor of good faith satisfies if he restores it to its place where he possesses the thing. loc. cit. 4.

They are due according to the contract to be paid at that place and time, of which see Volume II. "An agreement between parties was made expressly, or tacitly." See c. (4). Regularly, by precise agreements, solution in contracts as regards place should be made at the place where the contract was initiated: and at the expenses of him for whose benefit the contract was made. As regards time, if there be no agreement concerning this matter, the debtor does not sin by delay in repayment until he is reminded by the other party: unless that party omits to remind him out of fear, forgetfulness, or inability; or unless the debtor has bound himself by an oath, because an oath obligates from the outset.

Thus, point 43, n. 254, cum 255, etc., is not to be condemned for grave fault who delays paying the debt from a contract without causing grave damage to the creditor, even though this may be petitioned, because such delay does not then seem heavily injurious; and it adheres to 679. — « 5. If anyone is able to repay the whole immediately, he will be directed toward that. If, however, by further delay no further damage were incurred, or if it were not notable, then it would not easily be argued that such a delay

was a grave sin, which one suffered with intent to satisfy himself, or gradually paid off in parts. See 4. q. 6. p. 4.

Certainly it would be excused from a serious sin which delays repayment for a brief time, during which the Lord neither suffers a great harm nor is greatly considered as unwilling. Thus, n. 253, with Lugo, 680: Whether, if a debtor has a just cause for delaying restitution, is he then bound to make reparation for all the damage that the creditor suffers from the delay? It is replied: If the debt is not due to a fault, he is not bound thereby, as commonly taught by Lugo in d. 48, n. 35, and Croix in l. 3, p. 2, n. 252. If, however, it is from a fault, even then they are not bound if the delay is just, those who think that it is probable say so, because, as they say, then the creditor would be irrationally coerced during the delay.

But more commonly and more probingly is it held, as Lugo teaches in d. 2, n. 47, n. 32, and Molina in .684 — «6. He who knows himself to be bound to restitution, and when he can do so in his lifetime does not wish to restore it except at the point of death or after death through heirs, should neither be absolved nor can he be: because he is always in actual sin, and penitent not. Sylv. c. 44. d. 44. 7.

It is certain that one cannot be absolved who, when he can, does not wish to restore it, except in death, or by parts. Limita 4. Unless he be in bona fide, and caution be avoided which is not expected to avail, as stated at point 43, note 256, with Dicast. P. ## Cap. 2.

Dub. 7. Article 4. On restitution. Unless there is a just cause, namely scandal, infamy, and similar matters, restitution should immediately be made before the debtor is absolved. 259. According to 682. — It is asked here in Article 4 whether the debtor should be absolved before making restitution.

The first opinion states that one can be rightly absolved well even in the second instance, not only in the first, if he gives true signs of sorrow and purpose. Thus in question 4, article 5, number 2, with reference to ibid., number 258, with P.: But altogether I prefer the second opinion, which is held by P. Concilium tom. 7, p. 85, n. 25, that regular absolution of a debtor should not take place before restitution when such restitution is morally possible: just as a concubinarius should not be absolved before he casts off his concubine; for experience has sufficiently shown that debtors rarely make restitution after absolution, just as concubinarii rarely cast off their concubines. Wherefore S. 6. after 4. Dom.

Quadr. recte monuit: Primum igitur vade et concubinam tuam de domo mittas; restituas pecuniam alienam.... et tunc redeas ad confessarium, ut te absolvantur. However, the Council says well in libello citato n. 24: that if a truly prudent confessor really discovers a debtor who is sincerely prepared to restore what he owes as soon as he can, and restitution cannot be made promptly, then it is rightly permissible for him to absolve him on the first occasion; indeed Lugo himself admits this in just. d. 20, n. 243, even on the second and third occasions if such circumstances occur that the confessor should content himself with the mere purpose of restitution. It is asked whether, if a penitent be in good faith and the confessor foresee that the admonition concerning restitution will prove at least unprofitable, he ought to admonish him? Concerning this doubt, see what is said in the treatise on penance, lib. 6, cap. l., n. 614, where we have approved the negative part with Lugo and others commonly against a few: for if the confessor should perform his office with great prudence, how would he prudently act by warning the penitent, foreseeing that the latter will suffer harm to his soul, and conversely, that damage to the creditor should not be removed. 683. — It is asked 3rdly: how many sins does a negligent culpable committer of restitution commit?

The first opinion, which Salmeron considers most probable, holds that one commits so many distinct sins as there are occasions for restitution, and whenever he proposes not to make restitution; rather, whenever through sleep or by other distractions he is diverted. Thus in the same place, paragraph 14, number 262. The second opinion teaches that he commits but one sin by persisting in the same will not to restore, even though it be through the course of a year or more. Reason, because such a sin, although physically interrupted, is nonetheless not considered interrupted morally whenever the evil will does not retract, which virtually always remains in the effect of retention.

Thus 16. n. 549. him . Tanner et alii, caput 264. cum P. . Ambas sententiae sunt probabiles, sed haec secunda videtur probabilior. See book 2 on theft, note 40. ARTICLE II. In what order should it be restored? 684. To whom is restitution to be made, if there be a dispute? 685.

Whether the price of a thing sold can be paid to the seller's creditor? 686. Whether stolen money, mixed with one's own property, should be restored before other debts? 687. Whether certain debts should be repaid before some uncertain ones? 688. Whether prior debts to be discharged are from an act elicited, some from a contract? 689.

Which other debts are to be paid first? Whether creditors preferred in virtue of a mortgage are always to be given precedence over prior debts,

even according to the implicit nature of the mortgage? But are prior personal creditors preferred? Can a personal creditor who is poorer be brought forward? 692.

Whether prior demand is permissible? 693. Can a creditor retain that solution when among several matters there has been settlement? 694. Whether domestics can receive wages due to one who is burdened with debts? 695. Whether a wife and children can receive alimony? 684. --- R. esp.

It is certain that the order need not be observed when the debtor can pay everyone; but when he does not have enough, according to the rule to be followed: - 1. If a debtor has possession of another's thing, regardless of the title by which he holds it—whether through theft, deposit, finding, etc.—he should first restore it to its lord; and if he lacks this, then to the poor. Similarly, if a thing has been bought on credit, and the price has not yet been paid, it still remains. Bon. - q. 3. p. 2. This, however, is limited by Decretum lib. 2 contra Bonifacium, etc., unless the seller has received from the buyer a pledge or security. - 685.

It is asked, whether, in regard to the price of the thing remaining, the seller is to be preferred before other creditors of the buyer? It is certain 4: that if the seller has not received from the buyer either a pledge or a pawn, nor any security regarding the price, then he himself should be preferred, because then he still retains the dominion over the thing, according to l. What was sold, according to the Institutes on Contracts and Purchases, and from Article 19 concerning Sales. Div.

See point 42. §. 4. n. 234. And see below no. 796. It is certain that if the seller has received a pledge or a fiduciary loan, he has no deduction, because then he is already secure regarding the price. Lugo said on the 20th, number 45.

Therefore, the question is: when has the seller delivered the thing and received only a promise of payment for the price? The first opinion states that then the seller should be preferred, and this is held by c. n. 232. (they also cite Lessius, but not well, for Lessius in l. 2, c. 15, dub. 2, n. 11, where it is cited, speaks of a case wherein neither faith nor the price has been given). The reason is, first, because this is demanded by natural equity; secondly, because although the dominion of the thing has been transferred in that case, yet it was nevertheless transferred subject to the condition of the price being paid; hence such a thing remains hypothecated for the solution of the price. The second opinion, however, is more probable, as those who defend it maintain: Molina, Disputation 536, Section 5, Treatise

2, Chapter 41, Note 2, Page 18, Section 14, Note 5. Lugo, Decretum, lib. 20, sectio 2, num. 17, quandoque cum Vasquez.

P. ; it is not held by any right that the thing hypothecated to the seller remain so until he is paid the price: otherwise the buyer would not be able to dispose of it at his own will, which no one says. 686. — Now as for money obtained through theft and mixed with one's own property, should it be restored before other debts? They reasonably affirm . and Croix l. 3. p. 2. n. 375. because the entire aggregate is specially obligated to the Lord from whom the money was taken. See what is said in note 499. v. Note. 687. — "2."

If restitution is to be made on account of an unjust acquisition, the certain things, that is, those whose lords are known, should be restored before the uncertain ones; because the former are owed by right of nature to their lords, but the latter are owed by positive civil law to the poor. Although it is probable that the opinion set forth in Bus. ibid. no. 230 and Croix, l. 3, p. 2, n. 377—that certain debts should be restored before uncertain ones—is correct; nevertheless, it is also probable that if the debtor cannot restore both kinds of debts, then restoration should be made proportionately even to the poor for uncertain debts. They hold thus and consider it probable; Tapia, 20, sect. 1, n. 5, considers it most probable. The reason for this is that prelature does not owe creditors who are certain neither by positive law (which is certain) nor by law of nature, as Businius supposes.

But equally with regard to the law of nature, the poor succeed to the place of uncertain creditors, as Cajetan says in 2. 2. q. 62. art. 9, and Covarruvias in punct. 11. §. 3. n. 210. Such is the presumed will of creditors, that what cannot be restored to them themselves may be restored to the poor for their very souls' sake. 688. — « 3. Restitution of legitimate contra-ctor debts must be made before usury; for in these [debts] the lord will not have been simply unwilling. It is asked whether debts due from a crime are to be paid before debts due from a contract?

Three are the opinions among . point 12. §. 1. according to no. 234, which they themselves call all probable and safe in practice. Reason, which they have for seven and thirty chapters in chapter seventeen. Reh. Middle, etc., then says Lugo on the 20th day of the month from number 34.

Because from no law is there held to be any prelature to be made in these matters. Thus Lugo d. 20. n. 36. 2. c. 15. n. 16. item etc. 49. c. n. 236. 689. «4.» Debts derived from an onerous title should be paid before those which are due under a gratuitous obligation, unless something prevents it; nevertheless, they are ante omnia bound, even pia., p. 2., 5. In other debts,

particular justice must be observed according to the place, if such it be, and if it does not repugn to natural law; otherwise, according to what follows.

Debts must be settled to which goods have been expressly obligated as security. Debts which the goods of debtors have been tacitly hypothecated for, deposits lost under the power of debtors, 6. Of other creditors: after whom all these are those from whom usury has been accepted, and still later after them must goods be restored which are uncertain. But when many creditors of one kind are found, the time and seniority among them must be observed. He adds, from the debtor's goods, if he should have died, funeral expenses, and what pertains to the making of an inventory, testamentary dispositions, likewise to physicians and pharmacopolas. q. 13. (1). » Art. 1021. Goods common to debtors are distributed among creditors in proportionate parts, unless justice demands that one be preferred over another for a just cause.

Article 1094. Just causes for preferring creditors are called privileges and hypthecas. Art. 1095. Privileges are granted to those who, by nature of the debt, have consulted the creditors; and even hypothecations for preferring them are decreed. Those who are to be preferred decurrit præferendi sunt.

Article. 1096. Among themselves, by reason of the diversity of privilege, grace is determined. Art. 1097. The creditors of the same order are to be satisfied in proportion to their credit. 690. — As regards hypothecary creditors there is no doubt that those prior, even from a tacit hypothec, should be preferred; and if others from an express hypothec precede them in time, they are still to be preferred, according to the common opinion of Lago d. 20, n. 41. with Mol.

Vasq. et alii Art. 2099. Privileges affect either the immovable goods of the debtor or his movable goods, Art. 2100. Either all movable goods or some only. Article 2101.

Privileged, quae universitatem mobilium affectant, recensentur et exercentur hoc sedine: 10 judiciales; 10 funerarias; 10 de extremis morbis, cumulae inter ea; 40 stipendia famulantium pro anno actuali et proximo elapsiore; 50 victualia ministrata sex mensibus, si sit de minutissimo vendente, ab anno autem, si de cumulato vel convictu. Art. 2102. Privileged, quae tantum partem mobillorum afficiunt sunt: 10 qua si domus aut praedium decedit, pro locutione pretio in fructus anni currentis ac valorem omnium mobillorum, quibus domus aut praedium inatruuntur aut cultura praeediorms indiget; 10 Pignus in manu creditore existens; 20 Expensa in conservationem rei; 40 Solutio pretii rei mobili, quamdiu apud

emptorem existit, idque sive creditor ejus fidem secutus sit sive non. And if no days be appointed for payment, the thing itself may be reclaimed; nevertheless, this should be done within three days.

However, the proprietor of the house or estate is preferred for the price of the location; 10 which tavern-keeper expends on provisions deposited by a wayfarer in his place; 10 expenses incurred for transportation and things transported. Article 2103. Privileged, quae immobilia afficiunt, sunt: 10 Venditoris rei immobiliis pro pretio obtinendo; 30 Creditorum, qui ad rem immobilem acquirendam pecuniam appendentur, modo actu mutui et venditoris chirographo constat, hanc summam ad talam emptionem pettam ac solutionem ex ea factam fuisse; 30 Coheredum in bona hereditatis pro solutione portionum, quaeipsis ab aliis heredi bus refundi debent; 40 Architecti, operis condentoris, cementarii et operariorum in modificatione aliae opera assumptorum; 30 Eorum, qui pecuniam mutue dediderunt, ut ex illa merces operarii solveretur. Art. 2104.

Those privileged matters which are reviewed in Article 2101 also affect the immovable goods of the debtor, when movable goods are deficient. Art. 2105. Now if privileged creditors concerning movables, these being deficient, contend with those privileged regarding immovables for satisfaction, they shall be satisfied: 10 Expenses according to article 2101; 20 Debts according to article 2103. Art. 2106.

That privileged status regarding immobile assets may be reduced to effect as a debt incurred by operation of law in the registry of Hypothecarum. Art. 2107. Debts are considered to be related according to Article 2101. Article 2114.

A hypothecary contract is whereby an immovable thing is obligated to secure a credit for the debt. Art. 2115. Others are by legates, others by judicial decrees, another by commendatory letters. Art. 2116.

This triple hypothec follows the order among creditors only from the date of inquiry in the registers of the hypothecary conservator. Art. 2117. No se requiere inscripción: 1 por la minoría legal y el interdicto en bienes inmuebles tanto por razón de su gestalis; 1o Usuris en inmuebles medios pro detención y convenios matrimoniales. Art. 2147.

Creditors hypothecated on the same day are of the same order, since inscription is not counted by hours but by days. Edit. First it gives preference to debts arising from fault, when no hypothec or pledge intervenes in the contract, or when there is no thing in its own species;

because retaining a thing unjustly taken away is a graver injury than not paying a debt due under contract; therefore that must be remedied first. Thus. 73. c. 17.

Reb. Med. etc. Secunda praefert debita ex contractu, scilicet oneroso; nam debita ex gratuito certum est solvenda esse ultimo loco, ut Bus. num. seq.; ratio, quia alias solverentur debita ex aere alieno; maxime cum creditor dederit æquivalens. Thus Cajetan 20. ex n. 34. does not bring forward any reason of great weight. The third more common and probable opinion states: that the aforementioned debts should be paid pro rata, unless there is something in kind, or hypothecated, as stated above.

Reason, because from no law is there any deduction to be made in these matters. Thus Lugo d. 20. n. 36. . 2. c. 45. n. 46. item . c. n. 236. 689. « 4. Debts derived from an onerous title should be paid before those which are due from a gratuitous obligation, for instance, from a promise; because these include a tacit condition, unless something prevents it. Hence debts of the deceased must be settled before all legacies, even pious ones.

5. In rebus omnibus debitis observandum est jus particulare loci, si tale sit, et non repugnet iuri naturae. If there is no particular law of the place, then the common law must be followed, according to which 4. Debts must be settled for which the goods of debtors have been expressly obligated.

The wife's goods are to be drawn upon. (The debt of the wife is to be drawn out.) Debts, to which the goods of debtors are tacitly mortgaged. 4. Deposits lost under the power of debtors. 5.

Debits privileged. » 6. Creditors of others: after these come those from whom usury has been accepted, and even after them must uncertain goods be restored. » Sed quando tamen multi creditori secundum unam rationem inveniuntur, debet observari antiquitas temporis inter eos.

See III. tract. II. cap. XI. Whereupon he adds: The debts of a deceased debtor are especially to be paid first for funeral expenses, and those pertaining to the inventory, opening of the will, likewise for physicians, and pharmacists. See q. 13 (1). (1) The order by which creditors are to be requested is established for mutual utility? Article 104.

The goods of a debtor are apportioned among creditors in proportionate parts, unless justice and reasons demand that one be preferred over another. Art. 209. Legitimate causes for preferring creditors are called privileges and hypothec. Article 209.

They are privileged who, by nature of the credit, are preferred to all creditors, even those hypothecary. Article. 209. Among the very privileges themselves, the aforementioned diversity of privilege is determined. Article 209.

The creditors of the same order are to be satisfied in proportion to their credit. 690. — As regards hypothecary creditors, there is no doubt that those prior, even from a tacit hypothec, should be preferred; and if they precede other creditors from an express hypothec in time, they are still to be preferred, as commonly held by Lugo, d. 20, n. 44. with Mol. Vasq. et alii Art. 1099. Privileges affect either the immovable goods of the debtor or his movable goods, Art. 1100. Either all movable goods or some only.

Article 1101. Privileged, quae universitatem mobillium afficiunt, recensentur et caercentur hoc ordine: 10 Expensa judiciaria; 10 finacaria; 10 valimi morbi, alae praefatione inter se; 10 stipendia famulantium pro anno currente et proximè elapso; 10 victualia ministrata de mensibus, si agitur de vendente minutim, ab anno autem, si de vendente cumulatim vel de hero convictus. Art. 1102. Privileged, which affect only a certain part of movables are: 10 June, by which the owner of the house or estate is denounced for the price of letting in the fruit of the current year and the value of all movables with which the house or estate is sought or needs the culture of the estates: 10 Pignoras creditors have issued in hand; 10 Expenses on the kept thing; 10 Payment of the price of the movable, so long as it exists among the purchaser, whether the creditor himself has followed his faith therein or not.

And if no days have been fixed for payment, the thing itself can be reclaimed; provided that this be done within ten days. However, the proprietor of the house or estate is preferred for the price of the location; 10 which innkeeper spends on provisions deposited by wayfarers in his place; 10 expenses made for conveyance and things conveyed. Article 1103. Privileged, quae immobilia afficiunt, sunt: 10 Venditoris rei immobilis pro pretio obtinendo; 10 Creditorum, qui ad rem immobilem acquirendam pecuniam appendaturat, modò actu mutui et venditoris chirographo constat, hanc summan ad talam emptionem pettam ac solutionem ex ea factam fuisse; 10 Coherendum in bona haereditatis pro solutione portionum, quæ ipsa ab aliis haeredibus refundi debent; 10 Architecti, operis condentoris, commentari et operariorum in mediöcia alia opera assumptorum; 10 Eorum, qui pecuniam mutuo dederunt, ut ex illa merces operarii solveretur.

Art. 1104. Whose privileges are reviewed in article 1101, even the

immovable goods of the debtor affect them when movable goods are deficient. Art. 1105. If, however, privileged creditors concerning movables, these being deficient, with privileged ones concerning immovables contend for solution: 10 Judicial expenses according to article 1101; 10 Debts according to article 1103.

Article 1106. That privileged status regarding immobile assets, in order to be effective, requires that a debt incurred be entered into the register of Hypothecarum. Art. 1107. Debts are considered to be included in Article 1101.

Article 1114. A hypothecary contract is, by which an immovable thing is obligated to serve as security for a debt. Art. 1116. There is one kind of pledge, another kind of judicial order, and yet another kind of suretyship.

Article 1114. A triple-hue hypotheca establishes an order among creditors as of the inquiry date preserved in the registers of the hypothecary conservator. Art. 1118. No inscription is required: 1° for legal minority and interdict in immovables solely on account of the management thereof; 1° whoever in immovables materi for debt and for matrimonial provisions and inventions.

Art. 1117. Creditors hypothecated on the same day are of the same order, since the inscription is not counted by hours but by days. Edit. First it gives preference to debts arising from fault, when no hypothec or pledge intervenes in the contract, or when there is no thing in its own species; because retaining a thing unjustly taken away is a graver injury than not paying a debt due under contract; therefore that must be remedied first.

Thus. 73. c. 47. Reb. Med. etc. Secunda prefers debts arising from contract, namely onerous ones; (for debts arising gratuitously are certainly to be discharged last, as Bus. num. seq.) The reason is because otherwise debts from another's property would be settled; especially when the creditor has supplied equivalent value. Thus Cajetan 20. ex n. 34. does not bring forward any reason of great weight.

The third more common and probable opinion states: that the aforementioned debts should be paid pro rata, unless there is something in kind, or hypothecated, as stated above. Reason, because from no law is there any deduction to be made in these matters. Thus Lugo d. 20. n. 36. . 2. c. 45. n. 46. item . c. n. 236. 689. « 4. Debts derived from an onerous title should be paid before those which are due from a gratuitous obligation, for instance, from a promise; because these include a tacit

condition, unless something prevents it.

Hence debts of the deceased must be settled before all legacies, even pious ones. 5. In rebus omnibus debitis observandum est jus particulare loci, si tale sit, et non repugnet iuri naturae. If there is no particular law of the place, then the common law must be followed, according to which 4.

Debts must be settled for which the goods of debtors have been expressly obligated. The wife's goods are to be drawn upon. (The debt of the wife is to be drawn out.) Debts, to which the goods of debtors are tacitly mortgaged. 4.

Deposits lost under the power of debtors. 5. Debits privileged. » 6. Creditors of others: after these come those from whom usury has been accepted, and even after them must uncertain goods be restored.

» Sed quando tamen multi creditori secundum unam rationem inveniuntur, debet observari antiquitas temporis inter eos. See III. tract. II. cap. XI. Whereupon he adds: The debts of a deceased debtor are especially to be paid first for funeral expenses, and those pertaining to the inventory, opening of the will, likewise for physicians, and pharmacists. See q. 13. (1). (f) Order by which creditors are to be restored, reigning in seated abstinence?

Article 102. The debts of the debtor should be assumed by creditors in proportionate parts, unless for just causes one rather than another should be preferred. Article 2094. Legitimate causes for preferring creditors are called privileges and hypothec.

Art. 2095. They are privileged who, by reason of the nature of the debt, are even preferred to creditors and hypothecary creditors. Article. 2096. Among the very privileges themselves is determined the grace of the privilege.

Article 2097. Privileges of the same order are to be satisfied in proportion to credit. 690. — As regards hypothecary creditors there is no doubt that those prior, even from a tacit hypotheca, should be preferred; and if others from an express hypotheca antecedent in time also precede them, they are still to be preferred, according to the common opinion of Lago d. 20, n. 41. with Mol. Vasq. et alii Art. 2099. Privileges affect either the immovable goods of the debtor or his movable goods, Art. 2100.

Either all movable goods or some only. Article 2101. Privileged, quae

universitatem mobilium affectant, recensentur et exercentur hoc ordine: 10 judiciales expense; 10 funerarias; 10 saluberrimorum morborum sine praefatione inter se; 10 stipendia famulantium pro anno currente et proxime elapsiore; 10 victualia ministrata diebus sex, si agitur de vendente minutim, ab anno autem, si de vendente cumulatim vel de heri convictus. Art. 2102.

Privileged, those which affect only a certain part of the clothing are: 10 Iu, by which the owner of the house of the predii is given to God for the price of letting, in the fruits of the current year and the value of all the movable goods with which the house or the culture of the predia is provided; 10 Pignas existing in the hands of the creditor; 30 Expenses in the conservation of the thing; 40 Payment of the price of the movable things, if it exists among the buyer, and this whether the creditor himself has followed the security or not. And if no day has been appointed for payment, the thing itself may be reclaimed; and let this be done within ten days. However, the proprietor of the house or land is preferred for the price of location; 50 which the innkeeper expends in the things deposited by the debtor at his place; 60 expenses made for transportation and things transported. Article 2103.

Privileged, quae immobilia afficiunt, sunt: 10 Venditoris rei immobiliis pro pretio obtinendo; 30 Creditorum, qui ad rem immobilem acquirendam pecuniam suppeditarent, modd actu mutui et venditoris chirographo conatet, hanc summan ad talam emptionem pettam ac solutionem ex ea factam fuisse; 30 Coherendum in bona hareditatis pro solutione portionum, quae ipsi ab aliis heredi bus refundi debent; 40 Architecti, operis condentoris, cementarii et operariorum in midicia aliare opera assumptorum; 50 Eorum, qui pecuniam mutuo dederunt, ut ex illa merces operarii solveretur. Art. 2104. Those privileged matters which are reviewed in Article 2101 also affect the debtor's immovable goods, lacking movable goods, to the extent that they are involved. Art. 2105.

Now if the privileged creditor concerning movables, these being deficient, contends with the privileged creditor concerning immovables for satisfaction, they will be satisfied: 10 Judicial expenses according to article 2101; 20 Debtor's amount according to article 2103. Art. 2106. That the privileged regarding immobilia may bring about an effect, a debited entry should be made in the register of Hypothecarum. Art. 2107.

Debts are considered to be included according to Article 2101. Article 2114. A hypothecary contract is whereby an immovable thing is obligated to secure a credit for the debt. Art. 2115.

There is one kind of pledge, another kind of judicial order, and yet another kind of suretyship. Article 2116. This triple hypotheca establishes an order among creditors as of the date of inscription in the registers of the hypothecary conservator. Article. 2118.

No se requiere inscripción: 1 por la minoría legal y el interdicto en bienes imperfectamente gestionados únicamente por razón de gestión en sí; 1o por la esposa en inmuebles mediantes potestades matrimoniales. Art. 2117. Creditors hypothecated on that same day are of the same order; if not corrected, they are not counted by hours but by days. Edit.

First preference is given to debts arising from fault, when no hypothec or pledge intervenes in the contract, or when there does not exist a thing in its own proper species; because retaining a thing unjustly taken away is a graver injury than not paying a debt due under contract; therefore that must be remedied first. Thus. 73. c. 17. Reb. Med. etc. Secunda prefers debts arising from contract, namely onerous ones; (for debts arising gratuitously are certainly to be discharged last, as Bus. num. seq.) The reason is because otherwise debts arising ex alieno would be discharged; especially when the creditor has given equivalent value.

Thus Caj. 20. ex n. 34. does not bring forward any reason of great weight. The third more common and probable opinion states: that the aforementioned debts should be paid pro rata, unless there exists something in kind, or hypothecated, as stated above. Reason, because from no law is there held to be any subtraction to be made in these matters. Thus Lugo d. 20. n. 36. 2. c. 45. n. 46. item. c. n. 236. 689. « 4.

Debts derived from an onerous title should be paid before those which are due from a gratuitous cause, for instance, from a promise; because these include a tacit condition, unless something prevents it. Hence debts of the deceased are to be paid before all legacies, even pious ones, 8. page 2. Here debts due to be paid for the dead are first, even before pious legacies, 5.

In other debts, one must observe the particular law of the place, if such it is, and it does not contradict the law of nature. If there is no particular law of the place, then the common law must be followed, according to which 4. Debts must be settled for which the goods of debtors have been expressly obligated. The wife's goods are to be drawn upon.

(The debt of the wife is to be drawn out.) Debts, to which the goods of debtors are tacitly mortgaged. 4. Deposits lost under the power of debtors.

5. Debits privileged.

» 6. Creditors of others: after these come those from whom usury has been accepted, and even after them must uncertain goods be restored. » Sed quando tamen multi creditori secundum unam rationem inveniuntur, debet observari antiquitas temporis inter eos. See 3. part. 2. question 41.

Whereupon he adds that the debts of a debtor who has died are especially to be discharged first for funeral expenses, and those pertaining to the inventory, opening of the will, likewise for physicians, and pharmacists. See q. 13 (1). (1) The order by which creditoriae is to be restored is established in the code as a rule of assistance? Article 102. The debtor's goods should be taken above those of the creditor, in proportionate parts, unless for just causes one should be preferred to another.

Art. 204. Causes rightly preferential for creditors are called privileges and hypothec. Article 109. They are privileged who, by nature of the debt, are legitimately preferred to all other creditors, even those hypothetically considered.

Article. 209. In the very disparities of the privileges themselves is determined the privilege. Article 2097. Privileges of the same order are to be satisfied in proportion to the credit. — As regards creditors' hypotheses, there is no doubt that those preferred should be the prior ones, even from a tacit hypotheca; and if at the time they precede other creditors from an expressed hypotheca, they are still more commonly preferred, according to Lago d. 20, n. 41. with Mol.

Vasq. et alii Art. 2099. Privileges affect either the immovable goods of the debtor or his movable goods, Art. 2100. Either all movable goods or some only. Article 2101.

Privileged, quae universitatem mobiliam affectant, recenseantur et carentur hoc ordine: 10 judiciales expense; 10 funerarias; 10 vultus morbi sine praebitione inter se; 10 stipendia famulantium pro anno actualiter elapsus vel proxime antecedens; 10 victualia ministrata diebus sex, si de vendente minutim agatur, ab autem anno, si de vendente cumulatim vel de heri convictus. Art. 2102. Privileged, which affect only a certain part of movables are: 10 Lux, whereby the landlord of the house is entitled to the fruit of the current year and the value of all the movables with which the house or land is furnished or for whose cultivation it has need: 10 Pignoras in the hands of the creditor; 10 Expenses in the conservation of the thing; 10 Solution of the price of the movable thing, so long as it remains with

the purchaser, whether the creditor himself has followed his security or not. And if no days be appointed for payment, the thing itself may be reclaimed; let this be done within ten days.

However, the proprietor of the house or land is preferred for the price of location; 10 which innkeeper spends on provisions deposited by guests in his place; 10 expenses incurred for transportation and things transported. Article 2103. Privileged, quae immobilia afficiunt, sunt: 10 Venditore rei immobilis pro pretio obtinendo; 10 Creditorum, qui ad rem immobilem sequiendum pecuniam suppeditatur, modd actu mutui et venditoris chirographo constet, hanc summan ad talem emptionem pettam ac solutionem ex ea factam fuisse; 10 Coheredum in bona haereditatis pro solutione portionum, quaeipsis ab aliis heredi-bus refundi debent; 10 Architecti, operis condentoris, commentari et operariorum in medicina alia opera assumptorum; 10 Eorum, qui pecuniam mutue dederunt, ut ex illa merces operarii solveretur. Art. 2104.

Those privileges recorded in art. 2101 also affect the debtor's well-immobilized property, lacking movable assets. Art. 2105. If, however, privileged creditors concerning movables, these being deficient, with privileges regarding immovables for solution contend, they are solved: 10 Expenses according to article 2101; 20 Debts according to article 2103. Article 2106.

That privileged concerning immobilia, in order to bring about effect, may operate a debit incurred through registration in the Hypothecary registry. Art. 2107. Debts are considered to be included according to Article 2101. Article 2114.

A hypothecary contract is whereby an immovable thing is obligated to serve as security for a debt. Art. 2116. There are bonds, there are judicial instruments, and there is a commendatory one. Article 2114.

This triple hypotheca has arranged the order among creditors from the day of inquiry preserved in the registers of the hypothecary conservator. Art. 2115. No se requiere inscripción: 1 por la gestión de la impecatio en bienes del menor y del interdicto; 1o por la esposa respecto a las inmobiliarias para sus necesidades y provvisiones matrimoniales. Art. 2147.

Creditors hypothecated on the same day are of the same order, since inscription is not counted by hours but by days. Edit. First it gives preference to debts arising from fault, when no hypothec or pledge

intervenes in the contract, or when there is no thing in its own species; because retaining a thing unjustly taken away is a graver injury than not paying a debt due under contract; therefore that must be remedied first. Thus. 73. c. 17.

Reb. Med. etc. Secunda prefers debts arising from contract, namely onerous ones; (for debts arising gratuitously are certainly to be discharged last, as Bus. num. seq.) The reason is because otherwise debts arising ex alieno would be discharged; especially when the creditor has given equivalent value. Thus Caj. 20. ex n. 34. does not bring forward any reason of great weight. The third more common and probable opinion states: that the aforementioned debts should be paid pro rata, unless there exists something in kind, or hypothecated, as stated above.

Reason, because from no law is there held any pretension to be made in these matters. Ita Lugo dicit 20. n. 36. 2. c. 15. n. 16. item c. n. 236. 689. «4. Debts derived from an onerous title should be paid before those which are due from a gratuitous cause, for instance, from a promise; because these include a tacit condition, unless something prevents it. Hence debts of the deceased are to be paid before all legacies, even pious ones, 8.

page 2. Here debts due to be paid for the dead are first, even before pious legacies, 5. In other debts, one must observe the particular law of the place, if such it is, and it does not contradict the law of nature. If there is no particular law of the place, then the common law must be followed, according to which 1.

Debts must be paid for which goods of debtors have been expressly obligated. The wife's goods are to be drawn upon. (The debt of the wife is to be drawn out.) Debts, to which the goods of debtors are tacitly mortgaged. 4.

Deposits lost under the power of debtors. 5. Debits privileged. » 6. Creditors of others: after these come those from whom usury has been accepted, and even after them must uncertain goods be restored.

» Sed quando tamen multi creditori secundum unam rationem inveniuntur, debet observari antiquitas temporis inter eos. See 3. part. 2. question 41. Whereupon he adds: The debts of a good debtor are to be preferred for settlement in priority if he has died, especially those expenses pertaining to funeral costs, and what concerns the inventory, opening of the will, likewise to physicians, and pharmacists. See q. 13 (1). (1) The order by which credit is rightly assigned to the same is established as a kingdom in

the printed edition?

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[TRANSLATION_ERROR after 3 attempts: 400 Client Error: Bad Request for url: http://127.0.0.1:1234/v1/chat/completions] Either all movable goods or some only.

Article 1101. Privileged, quae universitatem mobillium afficiunt, recensentur et caercentur hoc ordine: 10 judiciares expense; 10 funerarie; 10 vitam morbi sine praefatione inter se; 10 stipendia famulantium pro anno currente et proxime elapso; 10 victualia ministrata & sex mensibus, si agitur de vendente minutim, ab anno autem, si de vendente cumulatim vel de hero convictus. Art. 1102. Privileged, which affect only a certain part of movables are: 10 June, whereby the propterarius of the house or land right, for the speaking price in the fruit of the current year and the value of all movables with which the house or land is furnished or the culture of the land requires: 10 Pledge in the hands of the creditor; 10 Expense for the keeper of the thing; 10 Payment of the price of the movable, whenever it exists before the purchaser, whether the creditor himself has followed his faith therein or not.

And if no days have been fixed for payment, the thing itself can be reclaimed; provided that this be done within and without days. The proprietor of the house or land is nevertheless preferred for the price of its letting; 10 That innkeeper who expends on provisions deposited there by travelers; 10 Expenses incurred for conveyance and goods conveyed. Article 1103. Privileged, quae immobilia afficiunt, sunt: 10 Venditoris rei immobilis pro pretio obtinendo; 10 Creditorum, qui ad rem immobilem aequiendam pecuniam suppeditarent, modò actu mutui et venditoris chirographo conatet, hanc summan ad talam emptionem pettam ac solutionem ex ea factam fuisse; 10 Coherendum in bona haereditatis pro solutione portionum, quaeipsis ab aliis haeredibus refundi debent; 10 Architecti, operis condactoris, commentari et operariorum in modica alia opera assumptorum; 10 Eorum, qui pecuniam mutuo dederunt, ut ex illa merces operarii solveretur.

Art. 1104. Where privileged in Article 1101 explicitly, even the debtor's immovable goods are affected by it, lacking movable goods. Art. 1105. If however an heir privileged concerning movables, these being deficient, with privileges regarding immovables contend for solution, they will be solved: 10 Expenses according to article 1101; 10 Debts according to

article 1105.

Article 1106. That privileged status regarding immobilia may be brought to effect, a debited insertment operates in the register of Hypothecarum. Art. 1107. Debts are considered to be included according to Article 1101.

Article 1114. A hypothecary contract is, by which an immovable thing is obligated to serve as security for a debt. Art. 1115. There is one kind of pledge, another kind of judicial lien, and yet another kind of perpetual lien.

Article 1116. A triple-hued hypotheca follows the order among creditors only from the date of inquiry in the registers of the hypothecary conservator. Art. 1117. No inscription is required: 1 for the legal minor and interdict in regard to the management of his goods to such an extent as has been gestiunally managed; 1o Usuries in immovables meditated for detentions and those matrimonial arrangements.

Article 1117. Creditors hypothecated on the same day are of the same order, since inscription is not counted by hours but by days. Edit. apud Croix l. 3. p. 2. n. 392. contra Notandum tamen, quod inter creditores hypothecarios semper omnibus sit praeferendus supra rem creditor, qui pecuniam dedit ad illam emendam vel ad reficiendam, v. gr., domum; vel ad custodiam sive ad cultum agrorum; vel ad collectionem segetum. ex l. 3. ff. Who are prior, etc. See point 42, section 2, note 244.

It is doubtful concerning personal matters. The first opinion holds that satisfaction must be made proportionately for all these matters. Thus. 32. disp. 1. p. 48. §. 48. num. 5. 2. n. 477. and ibid. §. 1. n. 245. Reason, because this person is obligated to these things that are not good for the debtor, but equally subject to all.

And it is proven from L. 1. §. Ex contrario ff. de separat., where it is said: Although to someone a creditor's own creditor may be added, thereby making that creditor's condition worse. Therefore, they infer that the prior creditor does not have a right to those goods. Second, which is held by S. tit. 2. c. 7. §. 3. Sylv. v.

Diana page 3, treatise 5, question 10. Navar. Eng. sect. 7. n. 148. n. 48. Cross book 3, part 2, note 403.

Concil. tom. 7. p. 478. n. 17. . 13. c. 4. p. 12. §. 4. n. 246. cum D. Thomae. juris in sexto, qui prior est tempore, potior est jure. For although civil law

speaks thus only of hypothecary creditors; yet canonical law speaks of all, and is founded in natural law; for the creditor stands before the personal debtor directly, but indirectly also has a claim even upon his goods, in which the creditor should not unjustly prejudice them in case of a subsequent claim. Both are probable, but the second is more probable. 694. — It is asked whether an impotent debtor can prefer to satisfy a poorer rich man or one who is not in need among all his personal creditors; two opinions are given, both of which are probable, as rightly stated in n. 247. The first one affirms.

Reason, because the obligation to restore is given to repair the harm done to one's neighbor; and more harm suffers the poor if restoration is not made to him than the non-indigent. Thus D. c. 48. Molin. Sa, l. c. The second opinion is more probable, because such a prelature is granted by no right: hence it must be restored proportionately.

Thus Lugo, d. 20, sect. 7, n. 464, loc. n. 248, with 2 c. 45, dub. 7, n. 46: if the creditor were extremely or seriously in need: then they say it is certain that this one should be preferred on account of charity. And thus it must be held in this case, where out of charity the creditor is already bound to yield up that solution due to him, having superfluities, so that relief may be given to the poor; otherwise he would not be bound to give succor to the poor by yielding up that solution from his own resources. 692. — "You ask whether it is permissible for the creditor to solve before the exigent? " Resp. 4. The solver knowingly after the fact, besides that which has already been repaid to one who holds a prior hypothec or privileged mortgage, commits a sin and is held responsible for the previous damage, from which he can also recover the repayment. . 5. ex l. We know §. And if the aforementioned chapter on the law of dissolution is cited.

"2." If from several equal personal creditors someone demands » (whether in judgment or outside), you must fully satisfy him, because » his diligence made him prior. . according to l. Orphan » Which are in fraud, etc. If such a creditor demands solution in judgment, commonly the Doctors say that they can retain from him what is exacted.

Thus Lugo, d. 20, n. 477, because laws grant preclusion even in conscience to him who previously obtained a judgment, and thereafter also the debtor should solvency to him in conscience, as Lugo says, n. 470: "But if he petitioned outside of court and executed it, Lugo, n. 476, feels that he cannot retain exactitude, because the creditor pre-judged those prior to him, with respect to whom preclusion is due according to his own judgment, as we said, n. 690." However, n. 249. according to the Decretum and c. 23, no. 14, they rightly say more probab ly that he can retain that,

from the dictum l. Orphan, ubi dicitur: Si vero justè exegerit, et cæteri creditores neglexerint exactionem... id quod acceperit creditor, revocari nullo pacto potest, quia alii creditores suæ negligentiae expensum ferre debent. The same is confirmed more clearly, from the law.

If not according to 6. §. 4. ff. de bon. auc. jud. etc., where it is stated: It should be decreed that neither the negligence nor the cupidity of another may harm him who has been diligent. That is to say, if the tutor, by satisfying both demands promptly, has discharged himself, it is equitable either that I seek the same portion previously due to me, or that you communicate what you have received. « 3. The debtor knowing his state to be declining cannot, without petition, fully satisfy, but must pay all personally in proportion (whether, however, he had accepted this payment and could retain it, is disputed). He cannot solve for one alone, omitting the others, except according to the aforementioned order.

693. — Others, however, as 2. c. 15. dub. 5. n. 41. and de rest. c. 4. punct. 12. §. 4. n. 250. state that the creditor, to whom an integral solution has been given, can retain it, although the debtor is unable to satisfy elsewhere. Reason, because it is not recalled as having been solved, according to l. Whoever, and l. Orphan, ff.

Which in fraud, etc., Card. de Lugo distinguishes and says: that if a creditor has received a solution in bad faith, he is bound to restore it to other creditors; but if in good faith, because he is not bound by an unjust acquisition, precisely because he has received it in good faith; not from an unjust retention, because through the solution he acquired dominion over the accepted thing. But more truly F. Concina, tom. 7. p. 180. n. 22. 1. p. 18. §. 21. n. 6. Cont. cap. 2. art. 6. sect. 2. concl. 7. in med. . n. 251. When they say that it is held to be bound in conscience to satisfy others as their due: because according to natural law it has no right to be fully satisfied, since the debtor cannot satisfy all; but according to positive law the aforementioned laws establish that it cannot be demanded again in external forum, although it can be retained.

Besides, the aforementioned laws, as we have seen above, intend to affect only the diligence of the creditor demanding it, and do not give him the right to retain what an unjust debtor has paid. Neither is it advantageous to the creditor that he has received in good faith; for although by receiving he did not do an injury to other creditors, yet by retaining he does an injury to those who at least had an equal right to the debtor's goods. Whether servants can receive wages from a master who is burdened with debts? They can rightly do so if they have rendered service in good faith. But indeed they are bound to withdraw if they observe that the master is

rendered incapacitated by such servitude to satisfy debts?

They affirm, and Anglicus according to no. 8 (1). Nevertheless, they deny Molinists (and it is not improbable that they say this; for themselves neither sin against justice if they serve when asked by the lord and receive wages, nor against charity if there will be none lacking to serve). But see what is said in n. 612. 695.— Whether children and wife can receive aliments from one burdened with debts! They affirm, in book n. 9, chapter 3, page 2, note 387: against Henry and others, that even if the head of the household contracts other debts for those to be maintained, provided he himself is bound by justice to maintain them: nevertheless, these others must not have any other means of sustenance. But it teaches: because a man is no less bound to support his wife than to restore usury.

It is nevertheless unjust for the wife to use the money given by her husband to pay debts, unless in a case where the family suffers serious hardship; for in such a case the husband is first bound to assist; hence then the wife uses her right. Thus it is said from Holy Scripture. Aprilis tertio decimo, nomen centesimumquinquagesimum quintum: si non sint necessarii, tenentur discedere nec posse prosequi ad exigendum. Edit ARTICLE III.

What is excused on account of restitution? § 98 What is excused on the part of the debtor? § 97 What if you cannot restore except with greater damage? What if the lord is willing to suffer equal damage? What if the lord shall be willing to suffer a greater loss in order that restitution may be made? § 98 See other cases. § 99 What if the debtor shall yield up his goods? § 100 When is restitution excused on the part of the creditor? What.

I. Is it permissible to retain or receive another thing from presumed consent of the lord? What. II.

Is a debtor who gives forgetful of the debt excused from restitution? § 101 What if the debtor should be reduced to extreme necessity by reason of restitution? § 102 What if he is reduced to grave necessity? § 103 What if the creditor himself is in the same necessity? § 104 Is the debtor who delays restitution on account of some cause bound to render interest which the creditor suffers? § 105 Is an heir of a thing held to make reparation for damages when the person to whom succession came was condemned capitally? § 106 Is a possessor in good faith held to restore if made defendant in doubt? 696. — R esp. 4. From the perspective of the debtor, excuses are made on the grounds that «the creditor should rationally be deemed content, even if in fact he is not content.» Common. Doct.

Whereby the following cases are resolved: • 4. You may excuse yourself in the forum of conscience (according to the probable opinion) from compensation for damage, if that gift has been made without your theological fault, a grave one, that is, a mortal sin, unless you have otherwise agreed with another, or have thereby become bound by debt. Wherefore thou art excused if, for example, thou hast killed someone through sudden anger, as if it were a movement merely first begun, or if from forgetfulness thou didst not extinguish the candle, and hence arose the fire, etc. For if, having perceived the danger in perilous actions, thou omit that diligence in avoiding it which men of the same condition commonly do, then grievously dost thou sin, and must restore the harm that has ensued gently. But in the external forum one proceeds according to legal guilt, which often is not a sin, and it is divided into broad, light, and very light [guilt].

(Vide dicta n. 549. et 550.) • 2. You are excused from restitution of uncertain matters, if you have made a composition with the Bishop or the Pope, d. 44. » (That even a Bishop can compose, they hold. Henry, however, holds otherwise against Lugo III, p. 2, n. 413.

See the aforementioned from note 592. v. Notates.) • 3. Moreover, if in the case where you are bound to restore a thing to the poor, yourself then "reverently" give it to the needy; and even then you are said to have given it later, yet at that time you were not bound to restore it. See 3. t. 2. c. 42. 697. – “4.”

If you cannot restore it except by incurring a notably greater damage to yourself or your own, or to the thing itself, than should be estimated as the measure of what the creditor will obtain from the restoration, then you can delay it while this inability would exist. c. ex Sylo. However, even if thou canst not restore it, if the loss to thee or thine, or to the thing itself, be greater than that which would be deemed fitting from the restoration to the creditor, then thou mayest delay, while this inability existed; c. ex Sylo. Tenêris autem restituere etiam cum tuo damno, si omissa restitutione dominus æquale damnum sit passurus.

Thus, punct. 45. n. 270. cum . n. 274. it is not a just cause for differenting restitution: unless (excipit Beja ap. Croix l. 3. p. 2. n. 424.) by reason of delay, the creditor suffer no damage. See elsewhere regarding the delay in restitution ap. Croix n. 425.

It is most probable that with Lugo on the 21st, note 26, and Croix n. 426,

as well as Bonaventure et al., you are not bound to restore the thing which the lord would abuse for sinning: rather, if he is foreseen as about to abuse it for harm to a third party by restoring it, when you can deny this without greater injury to yourself, or at least with no greater damage, according to said note 571. Otherwise. This is explicitly taught by St. Thomas 2-2, q. 62, art. 5, ad 4, where he says: When it appears that the thing to be restored would gravely harm either him to whom its restoration should be made or another person: then it ought not to be restored to either; because restoration is ordered to the advantage of him to whom it is restored. And then you would sin by restoring not only against charity, as they say in the aforementioned place, point 41, §2, n. 204, p. 168—and similarly at . 698. —«5.

If thou art impotent to restore; as if to live were not possible according to the decency of thy condition justly acquired from thee. Accordingly, if acquired unjustly (as stated in no. 269), hence, if a nobleman, for instance, cannot immediately release it unless he deprives himself of his servants, horses, arms, etc., or a primary citizen, unless he masters an unfamiliar mechanical art, or a mechanic, unless he sells his tools with which he lives, or eats a large sum of money, can defer and gradually restore without compromising his status. c. Bon. » (It is common among Croix l. 3. p. 2. n. 340.) » 6. That is to say, if you yourself have fallen into those difficulties through your own fault, for example.

» You should attribute to yourself the blame for idleness, games, and expenditures on superfluous clothing, because without the loss of your status you cannot now satisfy. » In the same place. » 7. That if likewise the creditor ought to bear damage from a equal delay, you rather than he should sustain it, since his condition is better.

» The extreme necessity is excused, in which regard all commons are for use; ibidem. » (commonly all together with) « 8. Wherefore if also the damage that is feared from the restitution of goods should not be proper to one's own goods, but solely in this respect, namely, that it deprives one of due things, it cannot therefore delay the restitution: because this is neither to suffer harm in one's own things nor to lose one's own status, but rather to forgive another and return to one's own proper state. Sayr.

Bonac. " 9. You are excused from restitution if it would be inequitable without danger to your soul or that of others; so that, for example, you might not fall into sin by avoiding a peril, lest your wife or daughters resort to prostitution, lest your sons engage in robbery, or lest yourself through impatience fall into despair. Bon. Kill. » 10.

Item, si non possis restituere absque periculo vitae, vel notabili detrimento famae: cum aliarum plus damni sustineres quam intulisti. Bon. d. 2. q. ult. p. 1. (Unless the loss of reputation is minimal in respect to the damage in the goods of the creditor. . 13. c. 1. punct. 17. n. 282. See what is said, n. 653. v. But you will say.) 699.— » 11.

Moreover, if you yield to good things (1), because laws have permitted that "he who has contracted many debts and does not have anything with which to pay them off may yield his goods," by leaving them in the hands of creditors, and then remain free, so that "in conscience he may be secure, retaining instruments of art and what is necessary for sustenance." That is, if nevertheless he later returns to a better fortune, he is still bound to restore it, according to l. When a thread is cut. who good. But still from question 1 remains bound to labor and acquire, so that he may pay. Whereupon chapter 5 of decree 15 of constitution 7 thus limits it: if he acquires more than is necessary for the dignity of his status, according to what was said above.

When, etc., unless indeed the due proceeds from a fault, for instance theft, in which case it can be retained only what is simply necessary for sustenance; hence those authorities teach that even if he concede these things which are justly acquired after the transfer, they may lawfully be held if necessary for the state. See. Book 3. Chapter 12. [De] 2. Cap. 16. Decretum 3. Bonac. with Diana, etc., teaches. Therefore, even though the principal debtor has ceased to be such, this does not thereby liberate the sureties. Tom. 8. r. et alii. (1) Art. 1266.

The surrender of goods is divided into voluntary and judicial. Article 1267. That which is voluntary is that which creditors voluntarily accept, concerning which a convention must be viewed. Art. 1268.

Judicial is the benefit granted by law to an unfortunate and good-faith debtor, so that he may retain the liberty of his person by surrendering all his goods to the creditors, notwithstanding any stipulation to the contrary. However, according to new law (Code de Procédure), certain goods are exempt from execution, such as those which the debtor needs for food and clothing; instruments with which the artisan needs to work; books of life necessary for the sustenance of the debtor's family; machines and instruments for teaching or practicing arts and sciences; flour and provisions of the debtor's family necessary for daily meals; etc. 760. — > Resp. 2. From the part of the creditor, excuse is made: 4. If he to whom something is owed has once, either expressly or tacitly, remitted it, for instance, if he has defaced your bond, or has returned it to you.

This remission, however, ought to be free; not prompted by fear, fraud, or deceit. Fill. tr. 32. c. 5. § 2. It excuses in the forum of conscience if you have paid him to whom your creditor was owed. . 8. 3. If compensation has been made to the creditor through something equivalent in benefit, for example, through a procuration of an office performed not gratuitously. 4.

Restitution may be omitted, or at least deferred; nay, it ought sometimes to be made, if the creditor is about to abuse it, for example, if anyone who has given you large sums of money asks them back in order to indulge in fornication or some other sin. Item si eas repe-reat ad peccandum contra justitiam, sive inferendum damnum inju-etum tertiae personæ: nisi tamen ex negatione restitutionis timereatur majus malum. See what is said in no. 697 and elsewhere. Question here I. Whether it is licit for thee to retain a thing belonging to another, or to receive it from the presumed will of the lord, namely, that if thou shouldst ask, he would willingly give?

The response is affirmative with the common opinion held in 7. c. 49. n. 43. with Ang. d. 24. num. 54. and 63. with Sylvest. Table page 483. number 600. Cross lib. 3. p. 2. num. 462. with Lessio, Sa, Antonin. 2. p. tit. 4. c. 45. where speaking about the obligation of restitution to which one is bound who receives alien property against the will of the lord, he thus subordinates: It is said against the will of the lord because, if the lord permits it and there is a just cause for believing so, one is not bound. The reason for this judgment is that the malice of theft does not so much consist in enriching oneself from another's property, as in enriching oneself with serious damage to the lord being heavily against his will; for this precept ordains charity towards one's neighbor not only by preventing theft, as we said in n. 534. v.

Question NoneII. et docet Lugo cum aliis d. 46. n. 49. Whereby, in order to excuse yourself from sin in such a case, it is sufficient that the Lord is not positively unwilling. This is confirmed from 1. 46. §. 7. ff. de furtis, where it reads: It has been rightly said that he who thought he was taking something with the will of the master is not a thief; for what deceit did he commit who thought that the master would have consented?

It is also confirmed by the doctrine of St. Thomas, article 45, question 2, article 5, quaestio 4, who says that it is not a proper concern of a religious to place something with the hope of remission of penalties at the discretion of a prelate; for ratification always pertains to the future. You oppose this, namely that interpretative license, which would be granted if sought, is not that it would be if sought; rather, it would be if given; therefore, such license does not suffice for the validity of an act, e.g., for hearing confessions or to sit at matrimony. But respond according to Lugo

and Co., that for hearing confessions and assisting at marriages, a present positive faculty is required, which is not had unless it be conceded present. But for receiving or retaining something alien to the matter at hand, no positive will of the Lord is required; rather, it suffices, as we have said, that He Himself be not positively unwilling; at least to excuse thee from a grave fault; for if thou thinkest the Lord unwilling insofar as the mode permits, then thou wilt not be excused from a venial sin, as rightly teaches Cajetan.

Arm. Therefore, let us inquire. II. Whether a debtor, forgetting the debt, excuses himself from repayment by giving something to his creditor?

The first sentiment denies it according to 1. c. 13. n. 41. 3. tr. 2. c. 12. n. 9. 1. c. 1. n. 90. Bonac. de leg. q. 4. p. 10. n. 13. tr. 6. r. 57. Reason, because since he is a debtor both on the title of justice and on the title of accepted donation, he cannot satisfy these two obligations arising from different titles by one solution. Neither does it hinder, as they say, that the debtor, if he had remembered his debt, would not have given a gift, but rather would have paid off the debt; because in contracts the actual will is considered, and not the conditional will.

It does not prevent 2. that a donation may have been made through error; either because of ignorance of the debt, or as a cause for the gift; for as they say in 2. cap. 17. n. 28.; hence, if someone has promised alms to a poor man, thinking him to be needy, he is not bound to fulfill that promise if he later knows that he does not need them, because the error was regarding the substance; but against this, if he later learns that he had falsely accused that poor man as his enemy, he is bound to give even if he had not previously made such a promise, provided he knew this beforehand. See the words spoken no. 715. They limit the aforementioned sentiment. 4. If the obligation of restitution arises from an ecclesiastical precept, it is to be supposed that if the beneficiary, hindered from making restitution of fruits due to the omission of hours, or residence, or alms after the fact, shall have expended them heedless of his obligation.

Thus. 1. part. 4. qu. 4. num. 7. 1. Question 13. num. 10. . 1. 4. qu. 26. num. 8. . qu. 45. at the end of the chapters. And likewise they say: q. c. ac Bon. l. c. p. 10. n. 13. on every restitution due to uncertain debts. They limit 2. When it is probably assumed that the creditor would willingly remit the debt if he had knowledge of the matter, ibid. Limitant 3.

If obligations were elsewhere than from justice, for instance if someone, forgetful of his vow, or of the sacrament of penance, or of an ecclesiastical precept, fulfilled a debt due, because then he would sufficiently satisfy, as

teach c. and Bus. with Azor, and Lass. The second opinion, however, which the Cardinals hold in 1. Crisi d. 64. n. 24. c. 49. Concil. 2. 2. pag. 366.

Cross lib. 3. part. 2. num. 452. cum Reb. 1. cap. 3. §. 7. e. Solution n. 4. with its master Baldello (and Diana considers it probable, reversing the first judgment p. 5, treatise 43, rule 94.), affirms that such a donor adequately fulfills his debt to justice (And Mazzotti says the same: if anyone freely renders some secular service to his creditor gratis, which would be estimable at a price). Reason, because in every liberal performance it is presumed that one wishes first to satisfy obligations of justice. That is proven from the law. When from many 97. laws of Solution it is said that he who owes money to another on account of several causes and discharges it from one cause rather than another is deemed to have discharged it for the more important cause; these are the words of the text: When a debtor pays money due on account of several causes (namely, because of infamy, or penalty, or hypothec), upon the cessation of both demonstrations, the more important cause of that debt which is due because of infamy will be held to have been paid first, soon followed by that which contains a penalty, etc. And there it is added as reason (which is more pressing), because it is presumed that if the debtor had been admonished, he would have discharged it for the more important cause: Which seems probable, so that a diligent and heedful debtor, thus admonished, would have conducted his business accordingly.

Thus the text where the Glossa explains the meaning of the words. Admonitum, addit, id est sua discretione, vel ab amicis. Another reason is added, namely that forgetfulness of the debt makes the donation entirely involuntary; for he who gives is always deemed to have this actual will (at least implicit): "I give," unless held back by some more weighty title. The first opinion is more common, and indeed very probable; but this second one is not lacking in probability either.

To the principal reason for the first opinion, namely that in contracts one should attend to actual rather than conditional will; it is replied that in our case there is not merely a conditional will, which never would have been in act, but also a true will, as we suppose, previously absolutely held for paying the debt, which always perseveres so long as it is not revoked: but you might say that a debtor giving a gift cannot have two opposing wills in one act, one to give a gift and another to pay the debt. But it is replied that he who forgets the debt is rather judged to will to discharge the debt from the first will which was held, than to will to give. Therefore, the entire question is reduced to whether in this solution the general previous will to pay the debt prevails over the actual secondary will to give; but it seems sufficiently probable that the former will prevail, as being prior and more

weighty. This is confirmed by what has been conceded by those same DD. contrariis; they concede indeed in tractatus 4., caput 8., n. 17: that if someone has emitted a vow not to vow and has determined himself not to allow future vows to count, and thereafter, forgetful of the first vow, he shall again emit; then this will be no vow at all according to the second emission, provided that the first one is not expressly or virtually withdrawn, namely, if after remembering the first one he does so.

Thus likewise in book 3, treatise 5, chapter 4, note 3, according to the law. Si quis de legatis dicit non valere posterius testamentum contra prius habens clausulam, ut per nullum aliud censeatur revocatum, nisi in secundo testamento per aliam clau- sulam expressè primum revocetur. In his cases I inquire, why the first vow, the first testament, is accounted valid, and not the second? No other reason can be assigned, save because that primary general will is superior to the actual secondary will. If therefore such fulfillment (speaking of a vow) satisfies God, why does it not satisfy man? Moreover, it is conceded . 4. tr. 4. cap. 4. n. 7. v.

Moreover, if someone promises to give something and the promise is accepted; and later he gives that thing, forgetting the first gift, he is bound to nothing else: here again I ask, why is he not bound to the first gift, since the two gifts are two distinct acts, unless it be because the prior will to discharge a debt prevails over the will to give? Nor is it valid to say that both these acts depend on the same title of liberality; for it is certain that this donation could bind itself by the same title of donation to two obligations. Therefore, by means of the second act, it is forgetful of the first donation, satisfying the first insofar as the general will previously established prevails to discharge the debt contracted by the earlier donation rather than again to give. It must indeed be boldly stated in our case, where it concerns fulfilling a debt contracted by justice, that it binds more strictly than a debt contracted by donation.

But a more pressing difficulty arises here, namely, that a certain debt is not compensated by a probable satisfaction. But it is responded to according to Cardinal Cusanus. Cross and Jazz. this proceeds when there is present alone the probability of the fact, not however when the probability of law is added. I explain this more clearly: When a debt is certain and there is a probability concerning the fact of the solution, certainly the debtor is not released by a probable solution, because a probable solution cannot equal a certain debt.

But here the probability is not concerning the truth or the fact of the solution, but concerning its effect, namely that through that solution the debt might be considered probabilistically satisfied, insofar as there was a

probable intention to satisfy; for this is the probability of law, whether proximate, whereby the debtor can properly benefit, as we said in lib. 4, n. 33 (4) with Sylo. Ang. Quando probabilitas versatur circa effectum solutionis, debitor non est liberatus ex obligatione certa secundum probabili solutionem, quia probabilis satisfactio non potest æquare certam debitum. Lugo, . (1) The number, which is here praised, is least suited to agree with a. 33. lib. 1. of this edition, but it is from the edition of Rome in the year 1757, in whose treatise on conscience, in an order quite different from that of the same one in book 1, n. 33, of this edition, the following is read: "It must be known that no one can benefit from a probable opinion regarding a danger of damage or proximate injustice." Here we must especially take heed, that we cannot make use of a probable opinion when it involves damage to our neighbor if the probability pertains solely to the fact, and not when (in certain cases) there is a probability of law, which makes us morally certain practically to act well and prudently by using an opinion as probable regarding the law or a proximate probability, as commonly teach our authors with Suarez, 1. 1. d. 12. sect. 6., and Soto de just. lib. 3. qu. 5. art. 6. ad. 4., who says: In all matters of great moment, even in a great injury to a third party, it is licit to follow probable opinions.

But you might say: Why can we use a probable opinion concerning the law in other matters, and not also in sacraments, and in administering medicine to the sick, since damage proximate can be suffered in both cases? Erratically — It is asked Hl. When a debtor, being constituted in necessity, is excused from restitution? This must be distinguished: grave necessity from extreme necessity; and it should be said that if a debtor cannot otherwise provide for himself except by returning goods which he ought to return, then he is not bound to return them and to cast himself into extreme necessity, even if the creditor is also placed in such necessity, unless his debt is returned to him.

This is the common judgment, as testified by the Sahnaticenses in the fourth chapter, number 274, on restitution. And this is so even if the debt existed in species, as Les. teaches in lib. 2, e. 40, when he and Sperer contra in cap. 4, n. 77, teach otherwise. Nevertheless receive it according to Les. and tract. 32. d. 4. g. 17. §. 2. n. 6., unless precisely by reason of that subtraction the Lord was constrained to the utmost necessity, because to take away from someone something necessary for his life is the same as to kill him; hence in such a case it is more fitting that the condition of the lord prior to possession be preferred. And moreover, after this necessity has been transcended, is the debtor bound to make restitution?

He responds to this, Suarez loc. cit., saying that distinction should be

made: for opinions sometimes are concerning law, namely, whether this is prohibited or not; sometimes however concerning the thing itself, as in sacraments, whether it was thus instituted; and in medicine, whether this drug is useful or pernicious. To be said 1. Whenever there is a probable opinion that this action is not prohibited, someone can form a certain conscience based on such an opinion. Besides the authors cited, many other objections are advanced to this concussion.

Naeurrae d. cap. St quis autem a. 12. et in simmam c. 27. n. 228. Succat. Angel. verb. Option.

Saint Augustine. First part. Title Three. Chapter Ten. The reason is because it exceeds the ordinary capacity of human faculty to obtain greater knowledge in actions. Moreover, it would be an intolerable burden to oblige all men to hold each particular opinion. Furthermore, I deem the thread of reason to be sufficient, because when there is a judgment that no prohibitive action should be lax, such a law is not sufficiently inclined until it is more certain about that matter.

They say—while H. When opinions are directed towards things themselves, often it is held that a man prefers the more probable one, when indeed by justice or charity life is deemed a loss which in the thing itself is present. Wherefore it is confirmed by the difference whether it be according to right or according to thing: for the first signifies an order toward the agent and entirely removes the danger of malice; but according to the second it signifies an order toward the thing itself, and does not remove the danger of damage, which is in the thing itself. Wherefore in the former case there is a sufficient excuse for following a probable judgment, because it is not yet a law ruinously proposed; but here there is no sufficient excuse since it is sufficiently established that danger remains in the thing itself; to this extent Suarez.

To which clearer explanation is given, say that a probable opinion behaves otherwise when it concerns the substance of the thing, namely whether the thing exists or not. Otherwise concerning the mode of the thing, namely whether the thing or action is honorable, or not. For when the opinion revolves around the substance of the thing, even a probable opinion cannot suffice to make what is not such, such; for example, if something appears probably to be a Sacrament but in reality is not a Sacrament, or similarly if it seems to be medicine, which in fact is rather poison and harms. When, however, opinion concerns the medium of the thing, whether it is honorable or not; then a probable opinion sufficiently effects that the action be honorable even though perhaps it is not so per se.

Reason why (as widely demonstrated in treatises on the use of probable opinion), in those cases in which we doubtfully consider a law prohibiting something as not truly being prohibited, or at least not sufficiently proposed, the law does not oblige; and thus then the action, to the extent that we do not sufficiently find it forbidden by the law, remains uncertain and licit. He distinguishes and says that if restitution was due from a contract, then when through that lord of the thing it had already been transferred to the debtor, he certainly should restore only the same amount; because then the debtor consumed what was his, whence the debt remains; but if the thing had not been transferred to another lordship, as in a deposit, pledge, etc., then it is probable that something else should be done. If restitution were due from a fault, Lessius n. 5 says that it is still probable according to P. Navarr. that there is no obligation of restitution; but more probabilius rightly with Scotus, Rich. Mire. Sylvius thinks that restitution should be made.

See the aforementioned statement in no. 520. He questions. IV. where we have distinguished the poor in respect to goods and in respect to hope. But that which is licit to take away for one's own necessity, is also licit for the necessity of one's own, namely of wife, parents, and children; thus, when one admits even for the necessity of brothers. In very grave necessity, however, it is necessary to distinguish other things as well, and to say I.

That is, if a person alone is constituted in a grave necessity as debtor, he can lawfully delay restitution when the debt arises from a contract, as all admit according to Croix lib. 2, p. 2, n. 430. If however it is due to a fault, Soto denies that restitution can be deferred; commonly, however, point 15, note 272 affirms this. S. tit. 2. c. 8. §. Quidam et Croix eodem loco cum Lugo, Scoto; citant autem ibi Ills: qui dicit, eum posse excusari etiam in perpetuum si damnum subeundi a debitore esset notabiliter majus damno creditoris. And the same is held by Lugo in d. 21, num. 21, who nevertheless states in num. 22 that to excuse the debtor from his contract, he should suffer a damage exceeding the debt by double; from delict, a damage exceeding the debt by quadruple, and damages owed to the creditor on account of omission of restitution, to which the thief is undoubtedly bound.

To be said II. That the debtor will likewise be excused if, being resolved to restore according to what he has unjustly acquired, he should incur a grave necessity. Thus Palaus, loc. cit., n. 1. quæst. 6., art. 4., n. 3. et 7. cum loc. cit., n. 269. cum Prado, Bann. I said justè acquisito, for according to common limitation 4. n. 4., if the status had been unjustè acquisitus through usury, etc., as is commonly limited.

Just as Amitant with Sylv. ao P., so too; but in this case it seems harsh to condemn the debtor to restore what he has already justly acquired. These, however, rightly advert to S. tit. 2, cap. 8, n. 347 and n. 65 with common opinion, which states that although at that time the debtor is not bound to restore, totally to change the state is held nonetheless to be bound to diminish as much as possible, namely by reducing the splendor of horses, servants, etc. But it is doubted whether in a case of grave necessity for both debtor and creditor there is an obligation to restore? Response: si creditor iam necessitatem gravem patitur, et debitor tunc non laborat, sed laborabit restituendo, certè tenetur restituere, quamvis in necessitatem gravem sit constituendus; quia in æquali necessitate gravi præferendus est creditor, ut magis ab ea eximatur ipse creditor innocens; quàm debitor, sive hic sit ex delicto, sive ex contractu. Thus commonly num. 30., num. 270., and Croix loc. cit. num. 430. with Azor: If however the debtor has already been constituted in a grave necessity, it is doubtful whether he is bound to restore when the creditor likewise labors under the same necessity?

The first opinion affirms with Prado, loc. cit. n. 273. And this follows accordingly as Roncaglia states in the seventh precedent chapter, canon 9, paragraph 2, when a debt arises from a fault. The reason for these matters is that outside the case where the debtor must decide in extremis necessity, it is always to be considered a better condition for the innocent creditor in equal necessity; otherwise, Roncaglia considers, if the debt were from a contract. The second opinion holds that in such a case the debtor may also differ restitution even for debt incurred by delict, provided that the thing taken no longer exists in its species, and moreover the creditor is not brought to great necessity by that very taking.

Ita Lessius n. 49. And Roncaglia and ibidem call it probable, for they equally consider it probable; and indeed it seems to lack no probability thereof, because in that case, if restitution were to be made, not only would the debtor have to bear damage equal to that suffered, but much more than the creditor; since the latter already labors under great necessity, he certainly could not restore anything unless with grievous inconvenience, so as almost to cast himself into extreme necessity. 704. — It is doubted whether such a debtor, excused from restitution for just cause, should be bound to pay interest to the creditor on account of the delay? Denies number 2 with P. N. 274. Bonaventurae et Villalpandus dico quod si debitum sit ex contractu, tunc non debetur interesse, quando justè differtur solutio; secundùm vero si ex delicto,quia tunc prima injusta acceptio reverè fuit culpabilis causa damni.

See what is said in note 680. Question NoneIV. If a thief is sent by the

master to return the thing stolen by a confessor or a faithful man, and he retains that for himself, does he have to restore it again?

They deny Castropal. Soto, Gabr. punct. 9. n. 187. quibus olim adhaesi. Felix Po-testa in the same place (number 179) defends this view, saying: Si fur ex consensu expresso creditoris hoc faceret, certè ad nil amplius teneretur; idem ergò dicendum, si hoc agit ex consensu tacito, qui certò præsumitur; aliàs creditor esset irrationabiliter invitus, dum certè fur non tenetur se prodere: taciti autem et expressi consensus eadem est vis. But the common and held opinion teaches the opposite, according to . 2. c. 16. dub. 6. n. 67.

Later, in De just. d. 21, under the fifth section, he fiercely defends it and calls the contrary opinion somewhat improbable, reasoning from this perspective, and cites in its support S. Antonius P. 25 with Molinaeus Fabri c. n. 188. Croix. l. 3. p. 2. n. 364. et 462. Reason, because the debtor is held effectively liable by reason of fault, and with the effect of rendering the lord indemnified. And this is such that the stolen property should be restored to the individual, since the thief's crime then becomes a true cause for his death, as rightly say Lugo and Sporer with others; or the value of the thing may be restored and given to the creditor.

In what case our opinion is more strongly confirmed, namely, because the ownership of that value remains with the thief until the money reaches the creditor, so that he may then freely recover it; hence, if it perishes, why should it perish for an innocent creditor and not for the thief, who is still its owner? Ratio autem à priori est, quia debitóris ex délictó tenéndus est ad ómne dámnum, etiam fortuítum (út certúm est apud Dóctóres) quod dómino evenít ex suá injusta ablatione; érgo quómo-dócquém rébus péréat, etiam sine úlla nova culpa furiís, débet dámnum dómino resarcírí. You would say in that case, when the thief is not bound to reveal himself, it is presumed that the creditor consents so that the debt may be repaid by another to one who is in danger; otherwise he would act irrationally by restoring the stolen goods himself. I respond: Indeed, the thief is not bound to restore by himself, but he is truly bound, and with effect, to make reparation to his creditor; and when he does what he can to restore, this suffices for the forgiveness of a new sin, but not for exemption from restitution.

The creditor, although he is presumed to consent to the mission, nevertheless is not deemed nor held to remit his right until the debt is recovered. Certainly, here is the literal English translation of the target sentence: Truly irrational it would be for him to petition that a thief expose himself; but truly irrationally he does not petition that he be

indemnified.

Nor is it valid to say that if the creditor were expressly presumed to have consented to this kind of mission, then the thief would be liberated; for then the creditor would hold the debt as accepted by virtue of his expressed consent and would thereby assume a risk upon himself; but in our case neither is he presumed nor does he hold the debt as accepted, nor does it receive any effect. Formerly I judged the first judgment to be truly probable, but after reasons have been brought forth, I soon thereafter came to greatly doubt its probability. Because Lessius and Sporer do not dare to condemn the first opinion, nor does Andeon himself. What if, when the Lord is certain, the confessor imposes alms upon the thief, so that he may give to the poor for the soul of the Lord, and he does give; because the Lord ought not to have been unwilling, which the thief, being judged by a confessor acting in good faith, deprives him of almsgiving.

All the more so, because, if he restores it again, the Lord will receive more than his credit, by receiving the credit and a good spiritual benefit already applied to him through almsgiving. I likewise do not assent to such a satisfaction. Although he who would follow this opinion, I do not even dare to condemn him. Otherwise it would be (as he himself says; because then it seems that the Lord never consented to this case, and a reason is habitually inferred against one's will. 705. — Quæretur V.)

When the accused is struck by death, whether his heir should be held to restore the damages caused by the crime? Scotus, etc., deny what Craix states in lib. 3, pars 2, nota 465. But to the contrary must it be said with Croix, Sporer, and others commonly. However, Croix considers it probable, ibidem with Soto, because then the parts are presumed to be forgiven; unless the matter withdraws further, as bene limitant Croix and Sporer: or rather, says Lugo, there would be very grave damage. A possessor under good faith is in doubt whether he has been made a defendant, held to nothing, because then possession is for liberty.

Thus Croix, lib. 2. p. 2. num. 568. cum . In like manner, in doubt, whether one has been cooperated in alien damage, one is not held responsible, according to Croix, n. 574. In dubio autem, an res restituenda sit materiae gravis, aut levis? You are held responsible for restoring a heavily burdensome thing, so as not to expose yourself to the danger of sustaining great harm.

Ita Croix cum Garden. num. 575. Namque etiamsi superveniat dubium an res sit aliena et dubium manens post debitam diligentiam adhibitam, teneaturne et liquid restituere? The response is negative: See what we have

already said above this question in book 1, numbers 35 and 36. And what if, upon the supervening doubt, he neglects to inquire?

See ibid. n. 37. TREATISE V. HEAD III. ON THINGS THAT CAN BE CONTRAINTED.

DOUBT I. What is generally a contract? What is a contract and how manifold is it? How manifold is a contract perfected? If anyone contracts without intending to contract, what then? If anyone does not intend to obligate himself, what then? Does a contract oblige in conscience without solemnities? Does an obligation arise from a contract concerning an infamous thing? And to whom then is restitution to be made according to the first opinion? 713 If an action is due but not from justice, should the price received be restored for that reason? 714 When does fraud or error render a contract void? 715 What if the fraud concerned the quality of the thing, but provided a cause for the contract? 716 Does grave fear unjustly render a contract void ipso facto? 717 Can one who has suffered from fear dissolve a contract by his own will? What if the contract be rendered void solely through reverential fear, or by importunate prayers? What if it be annulled through fear of legal penalties? Can one who has suffered fear repeat a claim against an innocent possessor? 707. — Resp.

It is a pact, whether by mutual consent of two parties, whereby each knowingly, freely, and legitimately reciprocally obligates itself to the other, whatever external sign thereof may be: for example, in a loan agreement, one party thereby obligates itself not to repay the loan before a certain time; the other party thereby obligates itself at that time to return it; and thus with others. In promissione autem, vel donatione absoluta, una pars talium obligatur post acceptationem alterius. Others are to be noted as named contracts, such as sale, loan, etc. Others are unnamed, of which and their nature. Naturali, ff. de prae- script. verò. quætur dantur species, scilicet: Do ut des: Facio ut facias: Do ut facias: Facio ut des.

Moreover, it is to be noted that some contracts are naked, others clothed, namely by stipulation and oath. However, with regard to naked contracts, no action is regularly conceded in external forum (4). In the Civil Code, expressly named and unnamed contracts are not distinguished, but are subordinated under general rules applicable to contracts. Which especially and in their proper place are to be applied, thus having a new regard for contracts in general, these are they? 708. — But it is asked: 4. in how many ways are contracts perfected? Resp. quatuor modis: I.

Consensu, ut in emptione, locatione, etc.; et si in istis convenitur de scriptura, ista magis ad probationem quam ad con-art. Art. 1101. A

contract is a convention whereby one or more persons bind themselves to another person or to several others to give, do, or not do something. Article 1102. Being present in each contracting party an obligation, it is called synallagmatic or bilateral; Art. 1103.

One who contracts an obligation with only one party is called unilateral. Article 1104. That is a commutative contract in which each party is deemed to give or receive something equivalent. A contract aleatory is that one in which the equivalent, which is given or promised, depends on the outcome of some doubt.

Article 1105. It is gratuitous when nothing is returned for what is given. Art. 1106. It is burdensome when something must be given or done in return for what is provided.

Art. 1108. Four are the essential conditions to validly contract: consensus; the competence of persons to contract; a certain and determined subject matter; a lawful cause. Art. 1109. Consensus obtentus per errorum, vel per vim et metum, vel per dolorem, nullus est.

Art. 1110. Error in contractum nullum facit, cùm sit circa substantiam rei, non verè circa personam, nisi principaliter cum eà contrahere intendatur. Art. 1111. Fear renders a contract voidable, even through some third party imputes it; Art. 1112.

Provided that it be due to a grave and imminent evil, and fall upon a man of steadfastness, taking into account the reason of age, sex, and condition of persons. Art. 1113. Fear as well against a harshly imposed contract incurred by ascending or descending kin against husband or wife. Art. 1114.

Only the reverential fear, namely that due to reverence for the father or mother or any ascendant, renders a contract non-rescindible. Art. 1116. Dolus contractum nullum reddit; cum ex machinationibus palam factum sit quod secluso dolo contractus non fuisset initus. Art. 1117.

Error, vis sive metus ac dolus non ipso jure contrahuntium irritum faciunt, sed solummodo locum dant rescissioni à judice faciendas. Art. 1118. Injury does not vitiate a contract, except in certain cases and for certain persons. Art. 1123.

He contracts validly who is not incapacitated by law. Art. 1124. They are incapacitated: a) minors; b) interdicted persons; c) wives in certain cases

expressly stated by law; d) certain individuals for specific kinds of contracts. Art. 1126.

Inhaberi non possunt: a) qui sunt in gratia habituali; b) qui sunt in peccato mortaliter elicientis; c) qui sunt sub poena mortis; d) qui sunt excommunicati à latere. Every contract revolves around some thing to be given, to be done, or to be omitted. Art. 1127.

By the name of the thing comes also the simple use or possession thereof. Art. 1128. The matter of contracts is every and solely the thing which falls under commerce. Article 1129.

The material must at least be determinate as regards its specified species; and although a part may be unknown, it is nevertheless necessary that it be capable of determination. Art. 1180. Future things can also be drawn into a contract. Article 1131.

The contract is invalid whose execution was prevented by no fault, false cause, or illegality. Art. 1132. A convention is valid even if its cause is not expressed. Art. 1133.

An illicit cause is when by law it is prohibited or contrary to good morals or to the public good. Art. 1135. Any solution of a debt implies the debt itself, so that what has been discharged may not be reckoned again and may be repeated. Article. 1376.

He who through error or by mistake received what was not his own is thought to return it. Art. 1168. A conditional contract is one whose execution depends on a future and uncertain event. It will serve the purpose of the parties involved, according to § [section], by consent and law. S. C. de trans.

Receive it, unless the parts intend to suspend the consent, until the writing is made; and this is deemed to be the case when from the beginning they agree on the writing, l. Contract, concerning faith instrumented. II. Contracts are perfected by words, as in a stipulation.

III. By Scripture, as in the census in the contract (4). IV. Traditione, ut sunt mutuum, donatio, depositum, commodatum, pignus: qui omnes contractus, nisi tradita re, non perficiuntur.

Translation: Handing over, as are the loan, gift, deposit, hire-purchase, and pledge: all these contracts are not completed unless the thing is handed

over. Thus commonly Lugum, c. 1. punct. 4. n. 5. Herein in contracts which are perfected solely by consent, there must not be deceit, Article 1169.

It is called a casual condition if neither from the debtor nor from the creditor, but from some fortuitous circumstance it depends. Article 1170. Potestativa audit, si à voluntate alterutrius pendet. Art. 1171.

It will be mixed when partly depends upon the will of the contracting parties, and partly upon that of some third party. Art. 1172. Every condition of an impossible thing, or of one that is dishonorable, or that is prohibited by law, is null, and no contract depends on such a condition. Art. 1174.

There is no contract arising from a convention with a conditional clause on the part of the debtor. Art. 1175. All conditions ought to be fulfilled in that sense which makes it probable that those contracting them intended to have them fulfilled. Art. 1176.

If a contract is subject to a condition such that a certain event shall have occurred at a time specified, and yet did not occur at that time, the condition is deemed to have failed. If however the time has not been prefixed, the condition is not deemed to have failed, unless it be established that the case cannot occur. Article 1178. The condition is deemed fulfilled whenever, through him who had bound himself under that condition, it was prevented from not being fulfilled.

Art. 1226. A convention with a penal clause is understood to be such that the debtor is obligated to do or not do something, if he fails to stand by his promises. Art. 1227. If the obligation of the principal contract is null, equally null is the condition of the penalty; on the contrary, if the condition of the penalty is null, it is not therefore that there will be nothing in the principal agreement.

Art. 1188. The obligation to deliver a thing brings with it the debt of delivering it, and up to the delivery itself preserves a damage arising from non-delivery and loss of profit for the creditor to be restored under penalty. Art. 1137. Whether the contract is for the benefit of one party alone, or for the benefit of both parties, the thing in question must be taken care of and guarded with diligence, just as a good head of household would do.

Art. 1138. The obligation to deliver a thing by mutual consent alone is

perfected such that it becomes immediately the risk of the creditor and his peril, unless the debtor has delayed; in which case the risk of the thing will be borne by him. Art. 1139. Interpellatio allusve aequalis actus aut exspiratio diel (si talia contractui apposita fuerit ut statim debitor in morà esse caperit, eùm exspiraverit) sumicit ut debi-tor vere in mora esse censeatur.

Art. 1140. Transmission of immovables tit. The determination of sales and privileges and hypothecations is established. Article 1141.

Si quis sese obligavit successive rem duobus dare aut tradere, illius erit, qui eam in effectu bona fide possidet, licet ipsius titulus sit tempore posterior. Art. 1142. Because if an obligation to perform or omit something is not mandated for execution, the debtor would have to compensate for the loss incurred and the profit lost. Art. 1144.

Even to the creditor a power can be given, so that he himself may see to it that the contract with damage to the debtor is brought to effect by the execution of the thing neglected. Art. 1148. The debtor is not liable for damages and lost profits arising, if through force or fortuitous event he omitted to give or do what he ought, or did what was prohibited to be done. Art. 1150.

If fraud did not intervene, the debtor is bound to compensate only those damages which, while contracting, he negligently failed to foresee or could have foreseen. (1) Art. 1341. Every contract should be written if the value of the thing exceeds 150 francs. Edict, part two, invited otherwise, to resist. Accordingly, if a contract requires writing or tradition.

Otherwise, in the forum of conscience, the intention of those who contract stands firm. Thus commonly the D.D. at n. 6 with . 2. cap. 47. dub. 2. n. 49. Covarr. Gom. etc. 709. — It is asked: whether, if one contracts by external signs without any intention to contract, one should be held to the contract in conscience?

Resp. negatively from common authority with L. I. disp. 9. n. 5. and Lug. Sylv. Prado with n. 7. Receive, unless in some contract one party has already fulfilled his part; for then you are bound to fulfill your own part, even if you have fictitiously promised, according to what is said about a fictitious promisor of marriage, see what is said at n. 642. 710. — It is asked: 3. whether one who knows the obligation of the contract desires indeed to enter into it but does not wish to bind himself remains obligated in conscience?

There is a double probable opinion. The first opinion affirms as found in . c. 1. punct. 3. n. 27. The second sentiment, however, more probable denies with reference to . lib. 4. d. 9. n. 5. Bon. eod. tit. qu. 1. p. 1. n. 5. et n. 28. cum Villat. qua ratione in cap. fin. de condit. appos. dicitur, quod conditio contraria substantiae matrimonii ipsum annulet, licet adsit intentio contrahendi.

See what is said about the oath. L. 1. n. 472. v. But moreover; and concerning the vow, see the same book, number 204. Question. II. 741. — Question NoneWhether a contract celebrated without proper solemnities obliges in conscience?

Threefold is given a probable opinion. The first opinion denies it; because contracts concluded without proper solemnities are based on presumption not only of deceit, but also of danger; and hence the human law can entirely remove the natural obligation of such a contract: thus the Church has nullified marriage contracted without a priest and witnesses. Thus. 2. c. 49. dub. 3. n. 35. Lugo d. 22. sect. 9. n. 252. c. 1. punct. 6. n. 54. cum Vasq.

The second opinion entirely opposed, which Soto holds in his work on Justice, lib. 4, quaest. 5, art. 3. Mol. d. 81. It is thus. Contractus n. 1. item Abbas, In-noc.

S. Antoninus and others according to Cabass. Theor. Jur. l. 6. c. 3. n. 2., et merito probabilem vocant Lugdunensis. Tertia sententia, quam sequuntur 4. e. 4. d. 14. cum loco citato cum Bannatensi et Bejani (et his se postmodum adjungit Soto l. c. q. 5. art. 3.) docet in his contractibus praeferendum esse possessorem, donec per sententiam judicis condemnetur ad restituendum; et probatur ex c. Cum sunt, de regula juris in 6. ubi: Cum sunt partium jura obscura, res potius favendum est quàm actori. I hold this sentence not only to be probable, but absolutely to be observed in practice, because (in accordance with the principle established throughout this book), since possession grants a certain right, the possessor ought not to have his property taken away unless it is proven that another has a rightful claim thereto.

This third opinion assumes that the second is sufficiently probable. But the authors of the first opinion might object with the example of the aforementioned clandestine marriage, without a parish priest and witnesses at its initiation, from which no natural obligation remains, since it has been declared by the Church in the 24th session of Trent to be

entirely invalid. But it is replied that such a contract differs greatly from others with respect to the contract of matrimony, since for itself having been elevated to the dignity of sacrament, a singular power has been imparted to the Church by God to dissolve the spouses from all obligation whenever they enter into nuptials without the proper conditions prescribed by the Church; for although the Church can do little concerning the matter of sacraments, and therefore cannot invalidate a marriage contracted with legitimate consent, she nevertheless may properly prescribe and declare that such consent is illegitimate which the spouses offer against the law of the Church for the sake of the common welfare and health of the Christian republic. Without doubt, however, it is held that the possessor is bound to stand by the judgment if condemned to restore, as well Cab. l. c. n. 5. adds at the end.

Whether, however, the judge may in that case rule against the possessor, if the opinion contrary to the possessor's is more probable? I rather doubt it, according to what is said in book 5, number 210. It is inquired about II. This however, it is to be noted what is found in l.

And if mutilarily, according to the chapter on trusts, namely, that if the heir has already delivered over a thing left in trust in the will non solemnly, he cannot thereafter reclaim it on this precise ground, since it does not appear that satisfaction has been made solely out of scripture (the words written) but rather out of the conscience of the one who was entrusted with the trust and according to the will of the deceased. Herein is set forth in the argument: Recognizing a less solemn will, and having discharged it, one does not seek to reclaim it. • 4. If you have promised or given to another only for interment purposes, or if you have made such a promise or gift by an external sign • 2. It is invalid if those who contract are incapacitated from contracting, or if positive law prohibits it.

See 2. c. 37. d. 8. 742. — • 3. Likewise, if the matter contracted is illicit, as when it is a sin; or illegitimate, as when a thief sells another's property. It is asked I. Whether a contract obliges with regard to a turpitudinous thing, such as the nurturing of murder, adultery, theft, sacrilege, fornication, and similar things?

It is certain that before the commission of sin there is no contract and it produces no obligation, since justice in no way can obligate to an illicit act; hence it is certain that in that case neither the promisor is bound to give the price of the contract nor the other to retain the received price. Book 4. Tract. 5. Of the seventh precept of the Decalogue. Part, second: Book 4.

Treatise 5. Of the seventh precept, there is an obligation to fulfill it according to book 4. Treatise 5. Of the seventh promise, there is an obligation to render payment according to book 4.

Treatise 5. Of the seventh promise, there is an obligation to fulfill it according to 2. c lib. 4. Treatise. 5. Of the seventh promise, there is an obligation to repay 7. lib. 4.

Treatise 5. Of the seventh promise, there is an obligation to fulfill it according to book 4. Treatise 5. Of the seventh promise, there is an obligation to fulfill it according to lib. 4.

Treatise 5. Of the seventh promise, there is an obligation to repay f lib. 4. Treatise 5. Regarding the seventh promise, there is an obligation to repay a hundred pounds according to book 4.

Treatise 5. Of the seventh promise, there is an obligation to repay from book four. Treatise 5. Of the seventh promise, there is an obligation to fulfill it according to book 4.

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Treatise 5. Of the seventh promise. Book 4. Treatise. 5. Of the seventh debt. Book 4.

Treatise. 5. Of the seventh prestation, there is an obligation to repay c in book 4. Treatise 5. Of the seventh promise. Book 4.

Treatise. 5. Of the seventh prestation, let there be an obligation to repay c in book 4. Treatise 5. Of the seventh prestation. Book 4.

Treatise 5. On the seventh prestation. Book 4. Treatise 5. Of the seventh prestation. lib. 4.

Treatise. 5. Of the seventh precept. Book 4. Treatise. 5. Of the seventh prestation. lib. 4.

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Treatise 5 On the Seventh Preeminent Act. Book 4. Treatise 5. On the

seventh prestation. Book 4. Treatise 5. On the seventh prestation. Book 4, Treatise 5.

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Of the Seventh precept. Book 4. Treatise 6. Of the Seventh preeminence. Book 4, treatise 6. Of the Preeminence of the Seventh. Book 4. Treatise 6. Of the Seventh preeminence. Book 4, treatise 6.

Of the Preeminence of the Seventh. Book 4, Treatise 6. Of the Preeminence of the Seventh Commandment. Book 4, Treatise 6. Of the Preeminence of the Seventh Commandment. Book 4, Treatise 6. Of the Preeminence of the Seventh Commandment. Book 4, Treatise 6.

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From the Seventh preeminence. Of the Seventh prestation. Of the Seventh

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Of the Seventh Obligation. Of the Seventh Precept. Of the Seventh Precept. Of the Seventh Precept.

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Book 4, treatise 6. On the Sixth Commandment. Of the Sixth Commandment. Lib.

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Of Sexton's Loan. Of the Sixth Precept. Book 4, Treatise 5. Of the Loan Made by Sextus. Of Sexton's Loan Of Sexton's Loan

Of Sexton Given. Of Sexton Given. Of the position of Sexton. Of the Sixth Precedence.

From the Sixth Precept. Of the Sixth Precept. Of the loan made by Sexton. Of the Sixth Precept.

Of the Sixth Precept. Of the Sixth Precept. Of the Sixth Precept. Of the Sixth Commandment.

Of the Sixth Commandment. Fourth treatise. Fifth section. Of the Sixth Commandment. Of the Sixth Precept. Of the Sixth Precept.

Of the Sixth Precept. Of the Sixth Precept. Of the Sixth Precept. Of the Sixth Precept. Fourth treatise. Fifth section.

Of the Sixth Precept. From the Sixth Precept. Of the Sixth Precept. Of the Sixth Precept.

Of the Sixth Precept. Of the Six Promises. Of Sexton's Contribution. Of Sexton's Loan. Fourth treatise, sixth section.

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Of the Sixth Precept. Of the Sixth Preposition. Of the Sixth Precept. Of the Sixth Precept.

Of the Sixth Provision. Unsixth Provision. Of the Sixth Precept. Of the Sixth Precept. Of the Debt Promised. Fourth Treatise. Sixth Section.

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Book 4, Treatise 6. Of Sexton Præstitu. book 4 treatise 6. Of Sexton's Pledge. Book 4, Treatise 6.

Of the Eighth Pledge. Book 4, Treatise 6. Of the Sixth Promise. Book 4, Treatise 6. Of the Sixth Precept. Book 4, Treatise 6. Of Sexton's Loan. Book 4, Treatise 6.

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Of the Seventh Precept. Book 4, Treatise 6. Of the Sexton's Prestitution. Book 4, Treatise 6. Of Sixth Precept. Book 4, Treatise 6. Of Sixth Precept. Book 4, Treatise 6. Of Sexton Promissory. Book 4, Treatise 6.

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De Sexton Given. 3. c. 9. n. 27. et 28. . 2. c. 14. n. 52. et c. 18. n. 48. punct. 5. n. 154. Cross L. 3. Part. 2. n. 692. Q. 1. Art. 1. n. 3. Lugo de just. d. 18. n. 59. cum Turr. et aliis communiter docet teneri promittentem solvere pretium, et contrà, recipientem non teneri ad restitutionem.

Reason, as some say, is that although the evil work itself may not be worthy of a price inasmuch as it is evil, yet it is worthy of a price inasmuch as it is useful or delightful to another. But this weak reason seems to me insufficient, for, as commonly teach DD. with St. Thomas, no price is due for a thing which yields only utility to the purchaser, and its deprivation causes no inconvenience to the seller, worthy of price. Neither is it valid to allow that a praiseworthy work receives just compensation for its rectitude when deprived thereof; for the privation of this rectitude, since it is merely a spiritual thing, does not seem in any way to be estimable as having value. The reason is more persuasive to me, because in any onerous contract, "do unto others as you would have them do unto you" (as we have established according to common opinion, n. 642.), natural law dictates that, when one has rendered his part, the other is bound to fulfill his part which he can lawfully render.

Wherefore, if another has already fulfilled his own work (even though it be illicit), you are bound to fulfill the promised reward to him. But thou wilt

say: this happens when both parties are estimable in regard to price; whereas here the cited action is one that is not worthy of any price. I respond: that sinful action is not worthy of any price, since it is illicit; but it deserves a good price well, because it is laborious, or ignominious, or perilous for him who performs it; for then price and action agree at least in the genus of temporal things. And although that ignominy or danger cannot be compensated by any price, and before a contract you are not bound to compensate what is lacking, since they are things of different orders between which no proportion is given; hence he who has stolen another's good repute is not held to pay money as compensation for the infamy if he cannot restore the reputation, as we said more probingly in n. 627.

However, given the contract and the performance by the other party of a sinful action, you are bound to fulfill the promised price, not now for the purpose of compensating the damage to the other party, but for the fulfillment of a natural obligation, from which (as we said) everyone is bound to fulfill his promised part after the other has fulfilled his. Otherwise (as rightly says Lugo loc. cit.), it does not seem how a rapist who violated a virgin under a false promise of marriage can be obligated to lead her, as we said in n. 643, according to common opinion. But as for civil laws regarding the first mentioned opinion, n. 57 responds that although they may rescind such agreements and remove all civil obligation on which a promised suit could be petitioned in court, nevertheless they do not vitiate acquisition of the thing through such a cause. And this sufficiently signifies the law at the beginning of this question, which declares that a prostitute can retain the price of her prostitution, because although she turpulently acts in being a prostitute, yet she does not turpulently receive when she is a prostitute.

It is asked. And si a man gives a woman a gift to extort coition, may she retain that gift, coition not having been granted? Si fuerit pactum de copula explicitum vel implicitum, tunc certe tenetur restituere; secus autem, si donum datum est ad alliciendum animum, quia illa datio fuit omnino liberalis; sicut si quis det pecuniam Episcopo tantum ad alliciendum, ut conferat beneficium, juste potest Episcopus retinere, si non conferat. Thus commonly Lugo d. 48, sect. 4, c. 49, d. 737, n. 3, praecept. c. 6, q. 2, et punct. 6, n. 165 cum Prado, Tap. etc. Well indeed they observe that a woman who receives such a gift is more difficult to excuse from the sin of scandal, because by accepting the gift she makes herself more ardent and bold in desiring him.

Whereupon he said in Jerome: A matron is not chaste who, when asked, accepts gifts. 743. — Question III. Si actio sit debita ex alia virtute quam

ex justitia, puta jejunium in quadragesima, an restituendum sit pretium pro illa actione acceptum? They affirm chapter 3, page 2, number 295. But more commonly and probably they deny it there. Reason because at that time the present price acquires a right which previously lacked. « 4.

Moreover, if a contract is made by means of force, deceit, or error concerning the substance of the thing, for example, if you gave vitriol as wine or glass as a gemstone, then it would be 714. — 5. The contract is not invalid (even though it can sometimes be rescinded on account of injury), if error or fraud intervenes concerning the quality or accidental circumstance; for example, you bought Moselle wine, thinking it to be Rhine wine: unless perhaps the intention of the contracting party was conditioned so as not to be bound unless such a quality or circumstance existed; which can virtually be considered if the error concerns an extremely altered circumstance and one that greatly exceeds its estimation, as noted in . 3. t. 4. c. 6. The contract is null if there is deceit or error regarding the substance of the contract. It is common; . 2. c. 47. dub. 5. n. 27. punct. 3. n. 19. cum etc. ex S. q. 51. art. 2. ad 7.

And this, even if deceit or error did not provide a cause for the contract, that is to say, even if, with the error revealed, one party had still contracted: because actual consent is always lacking. . See ibid., n. 28, and St. Augustine. Soto, Caj. Hence it was said that it should be led to; n. 20. with Molinaeus saying that it could be rescinded. 745. — But a greater doubt arises if the doubt or error was only regarding the quality of the thing, but gave cause for the contract, such that, upon its being made manifest, the party did not consent, whether valid contracts remain? They deny the Council.

Basil. and others at c. 10. dub. 2. n. 42. and Præpositus with Medina at l. 7. d. 48. n. 47. and c. 1. punct. 3. n. 24. consider it probable. Reason, because although quality in physical existence is something accidental, nevertheless in existence moral it has the reason of a substance. However, the opposite is commonly taught by the Doctors and more probable according to Lugo on day 22, section 6, note 92. Saint Thomas Aquinas, On the Virginity of the Mother, Book I, Question 64, Article 3, Third Part, Fourth Decree, Chapter 5, Number 3, Definition 2, Page 5, Number 19, Question 5, Response 2, Chapter 3, Article 2, Conclusion 3.

Prado, neither naturally. Not by positive law, for it is thus held in the Institutes, lib. 4, tit. 43, de acceptatione: If through being coerced with fear, or induced by deceit, or misled (understand this regarding quality) in his lapse, you promised Titius something that you were not bound to promise, it is openly clear that you are obligated according to civil law,

and the action intended to be given to you is efficacious: but it is unjust for you to be condemned; hence an exception is granted because of fear as a cause, or deceitful inducement, etc. Not by natural law, for to render a contract valid suffices the voluntary intention regarding substance, although it may be involuntary regarding accidents: unless (as they well observe above in precept n. 86 with the Saint). Generally however, the Doctors, as Concina says with Busemb., teach always that such a contract can be rendered voidable by deception on account of injury and defect of consent, and that the deceiver should be held liable for damages arising from the deception, according to lib. 43, de act. emporis. And si res adhuc integra est, n. 6. præc. c. 2. n. 98. addunt quod si error fuit invincibilis, non tenetur deceptus in conscientia implere contractum etiam onerosum postquam noverit veritatem quam si ab initio ei nota fuisset minimè consensisset: ratio quia haec est tacita mens contrahentium non se obligandi ad contractum quando se deceptos deprehendant: idque dicitur confirmari à consuetudine recepta.

When however the thing is not whole, namely if one part has already been fulfilled, then if that [other] party was not aware of the error, although you do not have an action for rescission, nevertheless you can still rescind the contract in conscience, if the matter is of great moment, and the deception was the cause of the contract, as Sylo and Navarr. say according to . and Bus. dict., n. 5, at the end. Si autem altera pars conscia erroris erat, tunc potest contractum irritare, sicut supra etiam in judicio dicitur. Nevertheless, it should be noted that in conscience the other party was not bound to manifest the error to you. Thus understand: provided that it does not deceive you, and provided that he himself is not the cause of your error, as he says at the end of the verse.

It nevertheless teaches. "6. Neither is the contract invalid, whether burdensome or gratuitous, out of fear, although it be grave and unjustly imposed, since he is still simply free and voluntary: although it can be rescinded by the judge at the discretion of one who has suffered fear. Thus commonly found in reference at page 8, note 4. Card.

Lugduni d. 22. However, some contracts are considered void ab initio (at least according to positive law), if they are made out of grave fear; such is the case 4. » marital contract, and even if a vow is added, it is considered void according to c. Cum locum, etc. Veniens, de sponsal. » (Whether the same applies to sponsal contracts?

They affirm that according to canon 4, paragraph 5, number 62, they say that espousals are resolvable only. See concerning the matter from the treatise on marriage, book 6, number 844. » 2. Religious profession, from

c. 4. Split, quae vi. 3.

In others whatever vows. (Even if the one who makes a vow desires to be bound. . c. 4. punct. 2. n. 42. ex communi. See the dictionary entry n. 497.) « 4. Contrac-tus dotis promissae, vel solutae, qui in hoc sequitur naturam matrimonii, cui accessorius est.

Read. If woman. §. If dowry, ff. What fear » cause. 5. Promise or tradition in matters of the Church, c. 45, q. 6.

» 6. The authority of the tutor extorted through fear. L. 4. §. ult. ff. de au- » ctor. tutoris per metum extorta. Others add to these, a promise, and a gratuitous donation, a renunciation of benefit, and jurisdiction extorted by fear.

However, these are disputed points; see C. Lugo on justice, decree 22, number 445. and seq. 716. — Question 4. Is a contract initiated by a grave fear itself invalid? There is a triple probable opinion.

The first opinion affirms; the reason is fourth: because if such a contract were naturally valid, justice would arise from injustice, since an obligation arising from a contract extorted by injury would be an act of justice. Reason 2. namely, if such a contract were valid, it would undoubtedly transfer the ownership of the thing delivered; and thereby instilling fear, it could be retained at least until the judge's decision; but this all deny; therefore the contract per se is null, at least according to positive law, ex l. Who into prison, 22. ff. That fear is a cause, where it is said that a contract is initiated out of fear, has no weight.

Thus it is stated in decree 326, note 2359, along with Sylo. Rebel and others in the note 2. point 40, who call it probable. The second opinion holds that gratuitous contracts are invalid, but not onerous ones. Thus Soto in IV, Deuteronomy 29, question 4, article 3.

Pope on marriage, lib. 4, cap. 6, n. 4, with Medina. Arag. Th. 2. 2. q. 89. art. 7. ad 3. ubi ait: Talis obligatio tollitur per coactionem, quia ille qui vim intulit hoc meret, ut ei promissio non servetur. Reason, because for a liberal donation and to differentiate other contracts, a completely free will is required by natural law.

The third opinion is more probable and most common, which Lugo holds in his treatise on contracts, distinction 22, note 415, book 2, chapter 47, question 6, doubt 6, who calls it almost common, chapter unity, question

4, response 1. Fill. tr. 33. c. 2. n. 32. Azor t. 1. l. 1. c. 41. Renzi contra c. 5 q. 3 1 art. 3 n. 41 et alii innumeri docet talem contractum esse quidem rescindibilem non vero invalidum neque de jure naturali neque positivo.

Not natural, because fear does not simply remove voluntariness, as D. Thom. 1. 2. q. 6. art. 6. states. Not by positive law, while in l. If woman many. That fear, etc., is commanded by judges to annul such contracts; therefore, of itself the law has them to be valid.

Nevertheless, receive marriages begun through a great fear, which certainly are null by themselves according to canonical law. See concerning marriage, law 6, note 4054. To which is added I. Religious profession, ch. 1. concerning those things which arise. II.

The choice of a prelate, cap. Where danger exists. § However concerning the choice in 6. III. The authority over wards extorted through fear, according to book 4, last chapters and sections on the tradition of ecclesiastical matters, from chapter Pervenit, by right of juramentation. V.

Ecclesiastical jurisdiction acquired through fear, and even civil jurisdiction, l. 2, c. de Judaeis. VI. Absolution from censures (not however the infliction of them). VII. Notification of benefits.

See doubt 6, note 37, 717. — Question 2. Whether one who has been moved by fear can dissolve a contract according to his own discretion without the authority of a judge? Croix denies it in lib. 3, p. 2, n. 638, and Mazzolino follows him in de contrahendo, t. 2, p. 40, saying that this is prohibited so as not to multiply disputes, if each one were allowed to seek his own remedy by his own authority. But the common opinion holds that it is to be maintained, which they [i.e., certain authors] number as common 6. c. 2. n. 423.

Filliastre, libri tertii, capitulum sextum, nota secunda, duo decimum, prima pars, pagina quadraginta, nota sex, caput undecimum, nota sedecima. Renzi l. c. r. 1. with Mol. and Reb. Whereby they infer that a person may well secretly compensate for the fear suffered; namely, if he asks and another does not wish to dissolve the contract. And on the contrary, he who instilled fear is bound to restore the thing extorted immediately upon the other one petitioning.

Thus, c. 11. at the end. The same thing which has been said about contracts initiated out of a great fear is to be said with Pontius concerning matrimony in book 4, chapter 11, notes 3 and 4, regarding initiations

through reverential fear (Even though Pontius holds note 3 to maintain that contracts merely gratuitous exist; according to his own judgment as stated above in question 1, they are not only to be considered as irritably moved by a command, but also ipso jure irritable). However, other Doctors admit this only when reverential fear is accompanied by blows or threats, or prolonged indignation, or a sinister look, or harsh words, and similar things which truly instill the fear of great evil. Thus Sanchez in matr. l. 4. d. 6. n. 14. q. 4. art. 3. n. 7. tit. c. 9. punct. 2. n. 33 et 34 says that, although Pontius in substance agrees with what is said about contracts initiated out of grave fear, he properly states in l. 4. c. 5. ex n. 3. cum aliis, that reverential fear per se is grave, because it is one thing to act from due reverence for a superior, and another from reverential fear, which necessarily brings about the fear of some great damage imminent from non-complied obedience, such as prolonged indignation, etc., as mentioned above. Whether importunate prayers constitute a grave fear? Pontius affirms this in the aforementioned note number 17 with Mald.

Lugo, etc. But it is more correctly denied, unless prayers are added to be feared on account of reverence towards the superior: thus 4. d. 7. n. 7. with many others, and c. n. 37. with Et well adverted [to] n. 8. not all frequent prayers are called importunate, but only those which are most urgent and frequently enjoined. With regard to whose persons is due a reverential fear? Beyond one's own father, the bishop, and the magistracy, it is said in . 4. d. 5. ex n. 26. with others, that respect is also due to the father-in-law, grandfather, guardian, mother (if she be austere and prone to enforce threats), and even the elder brother or uncle if one lives with them and they provide sustenance. 718. — But it is queried whether a contract initiated out of slight fear can be dissolved by reason of the fear endured? The first opinion affirms this in the internal forum; for in the external forum there is no action according to law 6, ff.

That fear, etc. The reason is because whoever inflicts an injury from which he expects to derive some advantage ought not to reap that benefit; hence, just as he himself is bound in conscience to rescind a promise made under such external fear, so too the promisor is not bound in conscience to fulfill it. Thus probably 2. c. 47. dub. 6. n. 46. with Navarr. Sol. de matr. l. 4. d. 19. n. 6. n. 6. et punct. 2. n. 14. cum Mol. Benè tamen excipiunt matrimonium (juxta nostram sententiam, vide de matr. l. 6. n. 1056.), et professionem religiosam.

An etiam votum? See what is said about the vow, no. 197. The second opinion, however, seems more probable to me than that which Pontius holds in his book on matrimony, chapter 10, section 6, note 4, and question 4, article 2, note 6, with Per. Reason, because consent is not

presumed from fear, but sincerely and freely; who knowing it to be light, and when he could easily do so, did not reject it.

However, to be excused altogether are engagements contracted through sponsalia which can also be dissolved by a judicial decision due to the great reluctance that sponsalia require, even when formed through slight fear. Chapter 3. On contracts. Dub. 2. 719. — Whether if there has been a serious fear unjustly causing the donor to give as cause for the contract, and the matter has come to a third possessor in good faith, can he who suffered that fear revoke the thing given back, and be bound to restore it?

It denies, ibid., n. 45, with Lugo, and it is evident from 1. 14, §. 3. What if fears, etc., where: In this action it is not queried, whether he who is agreed upon caused fear, or another did? It suffices to say this, that a fear was impressed upon him. « 7. I cannot contract with those who do not have administration of their goods: such are for the most part prodigals, madmen, minors, wives, religious persons, orphans, and wards; except in cases which you will see . 2. c. 17. d. 4. et infra n. 948.

DOUBT II. What concerning the species of promise and donation? 720. Whether a simple promise binds under a grave obligation? What if the promise is made to cause harm, or what if a great misfortune occurs? 721.

Who are insatiable in demanding? Gravated by debts? What concerning the donation between spouses? 724. And between father and son? 725.

Whether an obligation exists in a donation before acceptance? 726. What if the donation is made for pious causes? 727. Can a donation confirmed by a vow be revoked before acceptance? 728. When is a donation made binding upon an absent person? 729.

Whether a donation previously accepted is obliged after the death of the one demanding it? 730. What if the donation was mandated to be made for the benefit, and he himself neglected it? 731. Whether, before acceptance, the heir can inherit when the donor is dead? 732. Is it required that there be a delivery in order to acquire ownership of the donated thing? 733.

Whether a donation would exceed its proper limits if it included oneself? 734. Is there an obligation to fulfill a measure without demands of hunger? 735. Whether a lavish promise is valid? 736. What if a donation is made for an excessive purpose? 737.

What if it is due to a false cause? And what if the cause be secondary? 720. — R. Resp. What pertains to this can be easily gathered from the aforementioned statements on the vow in lib. 4, tr. 2, cap. 3. From which, and the doctrine of the preceding doubt is resolved: “4.”

"Promissio acceptata a promissario, si materia sit notabilis, an sub mortali obliget secundum se spectata, non convenit inter doctores." 19. section 40. Others (perhaps more probably) affirming with Vasquez 1. p. d. 65. Chapter 7, note 4.

Others (rather probably) affirming with Vasq. I, p. d., 65. "c. 7, n. 4." Maliciously, etc. I said according to itself, because it is certain that what can be accidentally obliged under mortal sin, for instance on account of a grave reason; they admit threats in this regard, similar ones in lib. 4, r. c. 9. in s at e?..... they admit threats in this regard, similar ones in lib. 4, r. c. 9. in s at e?..... they admit threats in this regard, similar ones in lib. 4, r. c. 9. in s at e?... Cap. 3. On contracts.

Dub. 2. tonea non parit. And to this the P. Concilium adheres, tom. 7, p. 637, n. 13: it is rarely an obligation from justice in a simple promise. It must be noted that it is certain that any promise, even one accepted, does not obligate if subsequently the promised thing is rendered impossible, or very harmful, or illicit, or useless; and generally speaking, whenever a notable change in circumstances occurs which, if foreseen, would have prevented the making of the promise: because a made promise is always presumed to be made under such an implicit condition. Thus commonly: Qu. 8. Art. 2. Num. 16. Et Const. 5.

This is expressly taught in 2. q. 140, a. 3, ad 5, where speaking about the obligation of the promisor, he says: If however he does not do what he promised, then it seems that he acts infidelitously by this very fact, which changes his mind. However, it can be excused in two ways: one way, if he promised what is manifestly illicit... Another way, if the conditions of persons and affairs have changed. For Seneca says (lib. 4 de benef. c. 34 et 35): In order that a man be bound to do what he has promised, it is required that all things remain unchanged. 721. — « 3. They cannot be given.

Lacking use of reason. 2. Muti et surdi nati, secus si tantum sint surdi vel muti, vel licet utrumque, si norint scribere. 3. Elderly who rave, whether twice-born children or not, provided they are in a state of sound judgment. 4. Pupils, or minors (unless it be for pious causes): yet their donations are valid in the forum of conscience. (See below c. 4.)

d. 1.) 5. Damned for a capital crime. See tract 6. rubric 3. 4.

Those who preside over cities, universities, republics, etc., cannot make donations except reparatory or to alms. T. 6. R. 16. Nimirum si reges et principes nimis profusi sunt in donationibus, in prejudicium regni vel status (praesertim si debitis gravati iis satisfacere non possunt, vel subditi nimium graventur exactionibus), possunt eae revocari a successoribus. Translation:

» tr. 6. r. 18. and 123. Add. Nor can he who is burdened with debts give to those who are owed (2). But here (1) from the Civil Code it is stated that they are incapable of giving either during their lifetime or by will. Art. 25. 1° Civilly dead, who neither can dispose of their goods either in lifetime or by testament, except by title of alienated pension; Art. 901. 2° Lacking perfect use of reason; Art. 903. 3° Minors, who have not yet reached the age of twelve years; Art. 904.

When minors have completed the age of twelve years, they can by testament dispose of half the goods which they would be able to give away if they were adults. Art. 905. 4° Wives married, who cannot inter vivos without express consent of their husband or judicial authority; nevertheless, they can dispose of property by will for mortuary purposes. (2) In the new law, donations immovable made by someone declared to be supported by the authority of a ten-day period before the cessation of goods from the forum outside are considered valid; however, the same goods transferred onerously to others may be recalled at the instance of creditors if the judge finds that the debtor has acted fraudulently. - damage, which otherwise promissory note - loan, and that you have seized - . 2. c. 18. d. 5. - 2. The whole of this obligates - the sender. Regarding - stretching itself to be obligated, or - declare itself in court seized - quin rex rex In F ex nfinfnfnfnfnfnfnfnfnfnfnfnfnfnfnfnfnfnfnfnnnnnnnnnn eod. tit.

Notandum 2. nihil posse accipi titulo lucrativo per ultimam voluntatem à debitore in præjudicium creditorum, ex l. Whoever however, from the aforementioned title cited. See Lugo, d. 20, n. 107, 723. — Add: between spouses, although other contracts are valid according to l. 5 and ff. de don. inter vir. et ux., yet the donation is of no moment, according to l. 3, § Secundum, ff. eod. tit. (1). However, the wife may retain or divert the donated thing if the donor knows it and does not object: Thus d. 6, num. 14, punct. 5, num. 400. cum . Nevertheless, such a donation is always confirmed by an oath, as stated in . 2. cap. 18. n. 88. . num. 2.

Salmant. ibid. num. 104. cum d. num. 104. But from the beginning the gift between spouses is valid if it be remunerative, or made on account of death, or if by giving it the giver does not become poorer, nor the recipient richer; likewise if the husband be prodigal, or if the wife give to her husband so that she may acquire some dignity, etc. See 102. 724. — Moreover, a gift is invalid between father and son while the latter remains under paternal power, according to l. 2. c. de inofficiosa donatione (2). (1) The contrary is established in the Codex civilis. Article 1091. Even though they may have wished otherwise, the spouses can nevertheless make a donation to each other through the contract of marriage, provided that the necessary conditions are met.

Art. 1092. A donation inter vivos including present goods made by spouses in the contract of marriage is not considered to be made subject to a condition: namely, that the donor survive, unless this is expressly expressed. Art. 1093. That is, if the donation includes not only present goods but also future goods, it is governed by the same laws as a donation made to spouses by strangers; yet the offspring born of that marriage do not acquire rights thereto, unless the donor dies before the donee.

Art. 1096. Mutus donationum conjugalium inter vivos semper revocari possunt; uxor revocatrix non indiget consensu mariti nec auctoritate judicis; non revocantur per prolem supervenientem. Art. 1097. Neither husband nor wife can make mutual donations to each other either inter vivos or by will using the same instrument.

Art. 1094. If the donor has no children or other descendants, he can give that portion to the other spouse, which he could also give to a stranger and in addition the usufruct of the portion that the law assigns to his ascendants; but if he has descendants, he can give either the usufruct of half the portion or a fourth part of the property and the usufruct of another fourth part to the spouse. Art. 1098. If children are from a previous marriage and the donor transfers to new nuptials, he can give only a part of the child of lesser recipient to his new spouse, and in no case more than a fourth of the goods.

Art. 1099. Minor in contractu antenuptiali et de consensu eorum, quorum interest, conjugi dare poterit, quidquid potest major. Article 1099. Donations made simulatae vel per personas interpositas sunt nullae sub pontificatu.

Art. 1100. It is considered that interposed persons descending from the

spouses of the donors are presumed heirs from a previous marriage and affinity, at whose time of donation the heirship is presumed. (2) Since it is evident from articles 905 and 904 that a minor is incapable of giving gifts during his lifetime and not even able to receive a gift by will before the sixteenth year, it is clear that a father cannot receive any gift from his minor son; yet he can always give a gift to his minor son. Edit. quaeritur, utrum licite possis a debitis gravato accipere donum? They affirm Lessius l. 2. c. 20. dub. 49. n. 168. d. 328. . 3. c. 4. n. 247.

Moreover, chapter 4, paragraph 5, section 4, note 94, and they consider probable Lugo on justice, decision 20, note 416, and decision 32, page 14, note 7. They say that you do not sin against justice, and therefore are not bound to restitution, unless you be led to give; know then that for this reason he who gives becomes unable to repay. Reason, because he can rightly transfer dominion while still being the true lord of the thing given; and you have the right to use the thing by accepting it, for justice does not obligate one to renounce receiving a gift to avoid harm to another when such harm happens accidentally, and you are not the cause or motive of the damage, but only permissive thereof, which does not constrain to restitution. Lessius adds moreover, to whom Molina adheres, that one does not commit a sin against charity, because charity does not obligate one to renounce one's own profit in order to keep creditors indemnified, since that happens by chance and one is not the cause of the damage, but merely permissive thereof, which does not constrain to restitution.

The second opinion, however, is truer and more common, which they hold, c. 4, q. 8, p. 2, n. 27. Lugo l. c. with Sylo. Mire. Angle.

Cov. et Reb. ac c. n. 92. cum S. docet donaturium mala fide accipientem omnino teneri ad restitutionem damni, quod obvenit creditoribus. Reason 4. because creditors also have a personal right to goods that have been given away; although in direct debts only the person is directly subject to it, nevertheless creditors indirectly have a right to the thing, or to the goods of the debtor, as more probingly Lugo says, d. 20, n. 458. Croix l. 3. p. 2. num. 403. . proc. c. 8. q. 6. punct. 42. §. 3. n. 246. alii relati n. 690. contra . And although the debtor giving is lord over the thing given, nevertheless (as it is said in n. 7) he has an impaired dominion over it, burdened with the obligation to pay what he owes, so that he cannot dispose of that thing at his own pleasure; wherefore that dominion, as it exists in the debtor, thus passes into the thing given.

The second reason is more urgent and convincing, because just as by giving the donor injures justice, rendering himself powerless to repay (which no one doubts), so also he who receives unjustly cooperates in the

action of the donor with damage to creditors; hence, even though the donator is not a motive cause, yet it is a true influxive and efficacious cause of alienation of the thing to the injury of creditors: for the contract of donation (as we shall say infra n. 725) does not consist merely in the will of the donor, but also in the will of the receiver; by which contract it is constituted, and without which there can be no alienation, whether donation or otherwise. Notandum autem hic 4. quod de jure positivo creditores infra annum a die scientiae habent actionem contra recipientem titulo sive lucrativo, sive oneroso, ad vindicandam rem scienter acceptam in ipsorum fraudem, nullo restituto pretio, ex l. Because the debtor, l. Whoever however. §. Similarly, ff.

Wherewithin to the fraud, etc., and according to the preceding law. Code identical, same title. It must be noted 2. that nothing can be accepted under a profitable title by the debtor through the last will against the prejudice of the creditors, according to the law. Whoever, from the same title cited.

See Lugo, d. 20, n. 107, 723. — Add: between spouses, although other contracts are valid according to l. 5 and ff. de don. inter vir. et ux., yet the donation is of no moment, according to l. 3, § Secundum, ff. eod. tit. (1). However, the wife may retain or divert the donated thing if the donor knows it and does not object: Thus d. 6, num. 14, punct. 5, num. 100. cum . Nevertheless, such a donation is always confirmed by an oath, as stated in chapter 48, number 88, paragraph 2. Salmant. ibid. num. 104. cum d. num. 104. But from the beginning the gift between spouses is valid if it be remunerative, or made on account of death, or if by giving it the donor does not become poorer nor the donee richer; likewise if the husband be prodigal, or if the wife give to her husband so that she may acquire some dignity, etc. See 102. 724. — Moreover, a gift is invalid between father and son while the latter remains under paternal power, according to l. 2. c. de inofficiosa donatione (2). (1) The contrary is established in the Codex civilis.

Article 1091. Even if they so wished, the spouses can make a donation to each other through the contract of marriage, provided that what must be preserved is preserved. Art. 1092. A donation inter vivos including present goods made by spouses in the contract of marriage is not considered to be made subject to a condition: unless it is expressed that the donee has survived.

Art. 1093. That is, if the donation includes not only present goods but also future goods, it is governed by the same laws as a donation made to spouses by strangers; yet the offspring born of that marriage do not

acquire any rights from such a donation, provided the donor's death precedes the donee's death. Art. 1096. Mutus donationum conjugalium inter vivos semper revocari possunt; uxor revocandi non indiget consensu mariti nec auctoritate judicis; per prolem supervenientem non revocantur.

Art. 1097. Neither husband nor wife can make mutual donations to each other either inter vivos or by will using the same instrument. Art. 1094. If the donor has no children or other descendants, he can give that portion to the other spouse, which he could also give to a stranger and in addition the usufruct of the portion that the law assigns to his ascendants; but if he has descendants, he can give either the usufruct of half the portion or a fourth part of the property and the usufruct of another fourth part to the spouse.

Art. 1098. If children are from a previous marriage and the donor transfers to new nuptials, he can give only a part of the child of lesser recipient to his new spouse, and in no case more than a fourth of the goods. Art. 1095. Minor in contractu antenuptiali et de consensu eorum, quorum interest, conjugi dare poterit, quidquid potest major.

Art. 1099. Donations made simulatae vel per personas interpositas sunt nullae sub pontificatu. Art. 1100. It is considered that an interposed person for descendants of the donor from a previous marriage and kindred, during whose time the heirship is presumed; it is clear, when considering articles 903 and 904, that a minor cannot make a gift among the living nor receive one in a will before the sixteenth year; hence he himself, while observing what must be observed, can always give to his minor son.

It is asked whether it is lawful for you to receive a gift from one to whom debts are owed? Affirmant Lessius l. 2. c. 20. dub. 49. n. 168. d. 328. 3. c. 4. n. 217. Moreover, chapter 4, paragraph 5, section 4, note 94, and they consider probable Lugo on justice, decision 20, note 416, and decision 32, page 14, note 7. They say that you do not sin against justice, and consequently are not bound to restitution, unless you be led to give; know then that for this reason he who gives is rendered impotent to make reparation.

Reason, because he can lawfully transfer dominion, although he is still the true lord of the thing given; and you have the right to use the thing by accepting it, for justice does not oblige one to renounce receiving a gift in order to avoid harm to another when such harm happens accidentally, and you are not the cause or motive of the damage, but only permissive thereof, which does not constrain to restitution. Lessius adds moreover, to whom Molina adheres, that one does not sin against charity, because

charity does not obligate one to reject a gift in order to keep creditors indemnified, since such an event happens by chance and you are not the cause of the damage, but merely permissive thereof, which does not constrain to restitution. The second opinion, however, is truer and more common, which they hold, c. 4, g. 8, p. 2, n. 27. Lugo l. c. with Sylo.

Mire. Angle. Cov. et Reb. ac c. n. 92. cum S. docet donatum mala fide accipientem omnino teneri ad restitutionem damni, quod obvenit creditoribus. Reason 4. because creditors also have a personal right to goods donated; for although in direct personal debts only the person is liable, nevertheless creditors indirectly have a right to the thing, or to the goods of the debtor, as more probingly Lugo says, d. 20, n. 158.

Croix l. 3. p. 2. num. 403. . praec. c. 8. q. 6. punct. 12. §. 3. n. 246. alii relati n. 690. contra . And although the debtor giving is lord over the thing given, nevertheless (as it is said in n. 7) that lordship is weak and burdened with the obligation to pay what he owes, so that he cannot dispose of that thing at his own pleasure; wherefore that lordship, as it is in the debtor, thus passes into the same thing upon becoming a donated asset. Reason 2. is more urgent and convincing, because just as by giving the donor injures justice, rendering himself powerless to repay (which no one doubts), so also he who receives injures by positively cooperating in the unjust action of the giver at the expense of creditors; although the donee may not be the cause moved, yet he is nevertheless a true and efficacious cause of alienation of the thing to the injury of creditors: for the contract of donation (as we shall say infra n. 725) does not consist merely in the will of the donor, but also in the will of the receiver, by which the contract is constituted; and without it there can be no alienation, whether donation or otherwise. Notandum autem hic 4. quod de jure positivo creditores infra annum a die scientiae habent actionem contra recipientem titulo sive lucrativo, sive oneroso, ad vindicandam rem scienter acceptam in ipsorum fraudem, nullo restituto pretio, ex l.

Because the debtor, l. Whoever however. §. Similarly, ff. Which in fraud, etc., and according to the preceding law. Code identical, same title.

It must be noted 2. that nothing can be accepted under a profitable title by the debtor through the last will to the prejudice of the creditors, according to the law. Whoever, from the same title cited. See Lugo, d. 20, n. 407, 723. — Add: between spouses, although other contracts are valid according to l. 5 and ff. de don. inter vir. et ux., yet the donation is of no moment, according to l. 3, § Secundum, ff. eod. tit. (1). However, the spouse may retain or divert the donated thing if the donor knows it and does not object: Thus d. 6, num. 14, punct. 5, num. 400. cum .

Nevertheless, such a donation is always confirmed by an oath, as stated in chapter 48, number 88, paragraph 2.

Salmant. ibid. num. 404. cum d. num. 404. But from the beginning the gift between spouses is valid if it be remunerative, or made on account of death, or if he who gives does not thereby become poorer, nor accused of undue favoritism; likewise if the husband be prodigal, or if the wife makes a gift to her husband that she may acquire some dignity, etc. See 402. 724. — Moreover, the gift between father and son while still under paternal power is invalid, according to l. 2. c. de inofficiosa donatione (2). (1) The contrary is established in the Codex civilis. Article 1091. Even though they may have wished otherwise, the spouses can nevertheless make a donation to each other through the contract of marriage, provided that what is required be preserved.

Art. 1092. Donatio inter vivos comprehending bona praesentia effecta à conjugibus per matrimonii contractum non consideratur factam sub conditione: nisi donatorius superstes sit, modò expressum hoc non est. Art. 1093. That is, if the donation includes not only present goods but also future goods, it is governed by the same laws as a donation made to spouses by strangers; yet the offspring born of that marriage do not inherit from it, unless the donor dies before the donee.

Art. 1096. Mutual donations between spouses, even made inter vivos, can always be revoked; the wife needs neither the consent of the husband nor the authority of a judge to revoke them; they are not revoked through the subsequent birth of offspring. Art. 1097. Mutuo donationibus inter uxores semper revocari possunt; non indiget consensu mariti nec judicis auctoritate; non revocantur per prolem supervenientem. Conjuges nec inter vivos nec per testamentum mutuas sibi donationes facere possunt uno eodemque instrumento.

Art. 1094. If the donor's spouse has no children or other descendants, she can donate that portion to the other spouse, which could also be given to a stranger and furthermore the usufruct of the portion that the law assigns to her ascendants; but if she has descendants, the spouse can give either the usufruct of half the portion or a fourth part of the property and the usufruct of another fourth part. Art. 1098. If children are from a previous marriage and the donor transfers to new nuptials, he can give only that part of the child's goods which is less than what the heir would receive, and in no case more than a fourth of the goods.

Art. 1095. Minor in contractu antenuptiali et de consensu eorum, quorum interest, conjugi dare poterit, quidquid potest major. Art. 1099. Donations

made simulatae vel per personas interpositas sunt nullae sub pontificatu.

Art. 1100. It is considered that persons descended as intermediaries between the groom and a previous or closely related marriage are presumed to have died at the time of the donation; hence, it is evident from articles 903 and 904 that an incapacitated minor cannot make donations either during his lifetime or by will before the sixteenth year. Therefore, he himself cannot receive a donation from his minor son, while, observing the necessary conditions, he can always make a donation to his minor son. It is inquired whether it is lawful for you to receive a gift from one to whom debts are due? Affirmant Lessius l. 2. c. 20. dub. 19. n. 168. d. 328. 3. c. 4. n. 217.

Item chapter 4, paragraph 5, section 4, note 94, and they consider probable Lugo on justice, decision 20, note 416, and decision 32, page 4, part 14, note 7. They say that you do not sin against justice, and consequently are not bound to restitution, unless you be led to give; know then that for this reason he who gives is rendered impotent to make reparation. Reason, because he can lawfully transfer dominion, although he is still the true lord of the thing given; and you have the right to use the thing by accepting it, for justice does not oblige one to renounce receiving a gift in order to avoid harm to another when such harm happens accidentally, and you are not the cause or motive of the damage, but only permissive thereof, which does not constrain to restitution. Lessius adds moreover, to whom Molina adheres, that one does not sin against charity, because charity does not obligate one to reject a gift in order to keep creditors indemnified, since such an event happens by chance and you are not the cause of the damage, but merely permissive thereof, which does not constrain to restitution.

The second opinion, however, is truer and more common, which they hold in c. 4, q. 8, p. 2, n. 27. Lugo l. c. with Sylv. Mire. Angle.

Cov. et Reb. ac c. n. 92. cum S. docet donaturum mala fide accipientem omnino teneri ad restitutionem damni, quod obvenit creditoribus. Reason 4. because creditors also have a personal right to goods that have been given away; although in matters pertaining directly to debts it is only the person who is subject to obligation, nevertheless creditors indirectly have a right even to the thing, or to the goods of the debtor, as more probingly Lugo says, d. 20, n. 458. Croix l. 3. p. 2. num. 403. . praec. c. 8. q. 6. punct. 12. §. 3. n. 246. alii relati n. 690. contra . And although the debtor giving is lord over the thing given, nevertheless (as it is said in note 7) he has an imperfect dominion over it, burdened with the obligation to pay what he owes, so that he cannot dispose of that thing at his own pleasure;

wherefore that dominion, as it exists in the debtor, thus passes into the thing given.

The second reason is more urgent and convincing, because just as by giving the donor injures justice, rendering himself powerless to fulfill (which no one doubts), so also does the receiver injure, who positively cooperates in the unjust action of the giver with damage to creditors; and although the donee is not a motive cause, he is nevertheless a true causality and effective cause of alienation of the thing to the harm of creditors: for the contract of donation (as we shall say below n. 725) does not consist solely in the will of the donor, but also in the will of the receiver; for without this no alienation exists, whether it be called a gift or donation. Notandum autem hic 4. quòd de jure positivo creditores infra annum à die scientiæ habent actionem contra recipientem titulo sive lucrativo, sive oneroso, ad vindicandam rem scienter acceptam in ipsorum fraudem, nullo restituto pretio, ex l. Because the debtor, l. Whoever however. §. Similarly, ff.

Which in fraud, etc., and according to the preceding law. Code from same title. It must be noted 2. that nothing can be accepted under a profitable title by the debtor through the last will against the prejudice of the creditors, according to the law. Whoever, from the same title cited.

See Lugo, d. 20, n. 107, 723. — Add: between spouses, although other contracts are valid according to l. 5 and ff. de don. inter vir. et ux., yet the donation is of no moment, according to l. 3, § Secundum, ff. eod. tit. (1). However, the wife may retain or divert the donated thing if the donor knows it and does not object: Thus d. 6, d. 41, num. 2, punct. 5, num. 100. cum . Nevertheless, such a donation is always confirmed by an oath, as stated in . 2. cap. 18. n. 88. num. 2. Salmant. ibid. num. 104. cum d. num. 104. But from the beginning the gift between spouses is valid if it be remunerative, or made on account of death, or if by giving it the giver does not become poorer, nor the recipient richer; likewise if the husband be prodigal, or if the wife give to her husband so that she may acquire some dignity, etc. See 102. 724. — Moreover, a gift is invalid between father and son while the latter remains under paternal power, according to l. 2. c. de inofficiosa donatione (2). (1) The contrary is established in the Codex civilis.

Article 1091. Even though they may have wished otherwise, the spouses can nevertheless make a donation to each other through the contract of marriage, provided that the necessary conditions are met. Art. 1092. A donation inter vivos involving present goods made by spouses in the contract of marriage is not considered to be made subject to a condition:

unless it is expressed that the donee shall survive.

Art. 1093. That is, if the donation includes not only present goods but also future goods, it is governed by the same laws as a donation made to spouses by strangers; yet the children born of that marriage do not acquire rights from such a donation, unless the donor dies before the donee. Art. 1096. Mutual donations between spouses, even while they are alive, can always be revoked; the wife needs neither the consent of her husband nor the authority of a judge to revoke them; they are not revoked through the subsequent birth of offspring.

Art. 1097. Donationes inter uxores semper revocari possunt; non indiget consensu alterius uxoris nec judicis auctoritate; non revocantur per prolem supervenientem. Neither husband nor wife can make mutual donations to each other either orally or by will using the same instrument. Art. 1094. If the donor's spouse has no children or other descendants, she can donate that portion to the other spouse, which could also be given to a stranger and furthermore the usufruct of the portion that the law assigns to her ascendants; but if he has descendants, the spouse can give either half the property and the usufruct of a fourth part, or a fourth part of the property and the usufruct of another fourth part.

Art. 1098. If children are from a previous marriage and the donor transfers to new nuptials, he can give only a part of the child of the lesser recipient to his new spouse, and in no case more than a fourth of the goods. Art. 1095. Minor in contractu antenuptiali et de consensu eorum, quorum interest, conjugi dare poterit, quidquid potest major.

Art. 1099. Simulatae donationes vel factae per personas interpositas sunt nullae sub ipsa lege. Art. 1100. Interposed persons descending from the spouses of donors are considered to be presumed heirs from a previous marriage and kindred, at the time of the donation. It is clear, from articles 903 and 904, that an incapacitated minor cannot make donations either during his lifetime or by will before the sixteenth year; hence, he himself cannot receive any gift from his minor son; yet, observing the necessary conditions, he can always give a gift to his minor son. qus- Lib. 4.

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Chapter 3. On contracts. Dubium 2. The common opinion (as stated in res. 116) is that a donation prior to acceptance does not impose any obligation; thus Luyo, De contr. d. 23. n. 38. cap. XI.

Question 2. Habert De contract. tom. 4. p. 3. c. 18. q. 1. Conciliarium tomi secundi, libri noni, distinctorii quinti, numerus tredecim. Wigandt translated chapter 4, number 53, verse v.

I have said 3. Antoine in part 1. Dog. §. 1. n. 2. France of proc. animad. 2. 2. c. 18. d. 8. n. 34.

Soto on justice, lib. 3, qu. 3. Sanctius de matr. l. 1. d. 6. n. 10 et c. 4. punct. 4. §. 1. n. 68 cum . Tapia, et aliis. And this is more true, as Lugo and others demonstrate, namely that it does not proceed solely from positive law, but also from natural law, or at least from the law of nations, as is proven in the aforementioned text.

Absentee. ff. de Donat. ubi dicitur: Si nesciat (donatarius) rem qua apud se est, sibi esse donatam, donato rei dominus non fit, etiamsi per servum ejus, cui donabatur, missa fuerit; nisi ea mente servo ejus data fuerit, ut statim ejus fiat. Reason is this: because a contract cannot be dissolved by those who have contracted it without mutual consent; as wisely reasons the most learned Cardinal Lugo, no one can acquire any right in alien things according to natural law without such consent; hence, without acceptance of the donation, no transfer of right occurs over the thing donated to the donee; and therefore, before acceptance of the donation, the donor remains free from any obligation and can indeed revoke it at his own will. Neither does it hinder l. If anyone gives silver, §. But if however, c. de Donat.; for there nothing else is said, except that the donation is valid, even if the thing given has not been delivered.

It does not hinder likewise. Nec ambigi, c. de Donat., ubi habetur donationem absentibus factam satis valere; respondetur enim (ut explicat

Glossa) id intelligendum, cum donatio acceptata fuerit per epistolam, aut nuntium, aut servum, ut habetur in l. If anything from the 13th chapter of On Gifts, section one. And even through an intermediary, according to four enactments concerning donations and the passage cited.

If concerning you absent, from Article 933. The donor who is greater [in capacity] can immediately accept the donation himself or through a procurator specially instituted ad hoc before a notary. Article 934. A uxoret nullam accipere potest donationem sine conjugalis consentio aut iuris auctoritate.

Art. 935. Donatio facta interdicto vel minori non emancipato a tutore acceptari debet. An emancipated minor, with his curator assisting, can accept a donation; Moreover, the father and mother of the minor, whether emancipated or not, even if they are living parents ascending as such, although neither tutors nor curators, can validly accept a donation on behalf of the minor. Article 936.

A deaf-mute person, whether acting personally or through a delegate, can accept a donation provided he is able to write; but if he cannot write, then a special curator appointed for this purpose will accept it on his behalf. Art. 937. Donations made to convents, hospices, and public institutions are accepted by their administrators with due authority. Art. 1087.

Donations made in the contract of matrimony can never be deemed invalid on account of a defect in acceptance. But it is common that what is confirmed by a vow, or by the death of the father. On the contrary, similarly it is valid in cases as above shortly enumerated for a donation between spouses: either if it be made for the cause of studies, or if it be made for the cause of marriage; or if the son be merely natural; or if the father gives the fruits of adventitious peculium to the son. These are understood thus, unless the donation be officious (see no. 740.), namely, harmful to the legitimate children or creditors; see no. 104.

Tapia et qui notat donationes factae à matre, vel à filiis parentibus, per se firmas esse. « 5. Donatio patris filio facta studiorum causâ est valida, nec filius tenetur computare in legitimum, tum quia fuit loco alimentorum; tum quia, si detrahatur, jam non fuit donatio contra hypothesim. Wading. et 6. alii cum t. 6. r. 23. et 29. But .

Because if it is nonetheless not certain regarding this matter, it must be presumed concerning paternal piety that such expenditures ordinarily do not enter into the collation of goods after the father's death, nor are they

to be contributed to the common fund, unless the father has testified his wish to be included in the legitimate computation. Thus also Wading. » from the margin. If the father two ff. family arise.

(Vide n. 955.) (1) « 6. If the father purchases for his son the office, the price should be reckoned in the division among the brothers: but not if he obtained it gratis from the prince; because what the son has received as a gift from the father are like military spoils, since they are given quasi as war trophies. Mol. tr. 6. r. 127. and 128. 725. — » 7. Donatio ante acceptationem non proicit obligationem, neque naturalem quidem; potestque revocari, etiamsi voluerit se absolutely obligare.

Presently, and by its silence, a thing is deemed accepted by him; because in matters favorable it is held to be equivalent to consent. Molin. et alii 48. t. 6. r. 89. 98. et 108. But for another, no one can accept without a special commission unless a donation is made to the Church or to a pious cause; for it to be valid and irrevocable without acceptance is probable. c. r. 106. et p. 3. t. 5. resp. 107. Mullis; tamen in certain cases, provided that the words are directed to the present, a father or mother can act on behalf of a son even if he is emancipated, a tutor for a ward, a curator for a minor, a fils de famille for his father, a servant for his master, a monk for his monastery; moreover, according to many, anyone who bears responsibility for another person's affairs may also stipulate, such as a prelate for a religious individual, a husband for his wife, a master for his servant, etc.

Furthermore, the same is permitted to judges and public notaries. . t. 6. r. 97. » (2). (1) Art. 852. Expenses for food, clothing, education, learning an art, furnishing (gall. equipment), marriages, and gifts made according to custom should not be referred to as legitimate. Refer to the articles mentioned in article 854. (2) Article 932.

The donation made between living persons does not oblige the donor unless it has been previously accepted by express words. It can be accepted by an act subsequent to the donation, provided that the donor is still alive and the acceptance has been signified beforehand. Chap. 3. On contracts.

Dubium 2. It is common opinion (whatever may be said in res. 116) that a donation prior to acceptance does not impose any obligation; thus Lugo, De contr. d. 23. n. 38. cap. XI. Question 2. Habert De contract. tom. 4. p. 3. c. 18. q. 1.

Conclusiones, tomo 2, librum 9, distinzione 5, nota 13. Wigandt translated chapter 4, number 53, verse v. I have said 3. Antoine in n. 1.

Dog. §. 1. n. 2. France from præc. animad. 2. . 2. c. 18. dub. 8. n. 34. Soto on justice, lib. 3, qu. 3. Sanc. de matr. l. 1. d. 6. n. 10. et c. 4. punct. 4. §. 1. n. 68. cum .

Tapia, et aliis. And this is more true, as Lugo and Sol. prove, that it does not proceed solely from positive law, but also from natural law, or at least from the law of nations, as is proven from l. Absentee. ff. de Donat. ubi dicitur: Si nesciat (donatarius) rem qua apud se est, sibi esse donatam, donato rei dominus non fit, etiamsi per servum ejus, cui donabatur, missa fuerit; nisi ea mente servo ejus data fuerit, ut statim ejus fiat. The reason is that a contract cannot be concluded without the consent of both parties; as wisely reasons the most learned Cardinal Lugo according to natural law no one can acquire any right in another's property without his consent; hence, without acceptance of the donation, no transfer of right occurs over the donated thing to the donee; and therefore, before acceptance of the donation, the donor remains free from any obligation and can indeed revoke it at his own will.

Neither does it hinder l. If anyone gives silver, §. But if however, c. de Donat.; for there nothing else is said, except that the donation is valid, even if the thing given has not been delivered. It does not hinder likewise. Nec ambigi, c. de Donat., ubi habetur donationem absentibus factam satis valere; respondentur enim (ut explicat Glossa) id intelligendum, cum donatio acceptata fuerit per epistolam, aut nuntium, aut servum, ut habetur in l.

If anything from the 13th chapter of On Gifts, section one. And even through the intervening 4 chapters of Donatus and the cited passage. If concerning you absent, from Article 933. The donor who is greater [in capacity] can immediately accept the donation himself or through a procurator specially instituted ad hoc before a notary.

Article 934. A uxoret nullam accipere potest donationem sine coniugi consensus aut judicis auctoritate. Art. 935. Donatio facta interdicto vel minori non emancipato à tutore acceptari debet.

An emancipated minor, with his curator assisting, can accept a donation; Moreover, father and mother of the minor, whether he be emancipated or not, or even if they are living parents ascending in degree, though neither tutors nor curators, can validly accept a donation on behalf of the minor. Article 936. A deaf-mute person, whether acting personally or through a delegate, can accept a donation provided he is able to write; but if he

cannot write, then a special curator appointed for this purpose will accept it on his behalf. Art. 937.

Donations made to convents, inns, and public institutions are accepted by their administrators with due authority. Art. 1087. Donations made in the contract of matrimony can never be deemed invalid on account of a defect in acceptance. But it is commonly understood that L. 4.

Treatise 5. Of the seventh precept of the Decalogue. Moreover, if- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. by nation L. 4.

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However, to be noted with 4. Treatise 5. Of the seventh precept of the decalogue. matrin. 1. 1. d. 6. n. 14., and 3. n. 4. that is to say, if a donation has been made for L. 4. Treatise 5.

Of the seventh precept of the decalogue: infinite, it can be bestowed even before acceptance of the gift, because for the in L. 4. Treatise 5. Of the seventh precept of the Decalogue. The infinite, is valid itself even before the acceptance of the gift, because for in L. 4. Treatise 5.

Of the seventh precept of the decalogue: infinite, it is valid itself even before acceptance of the gift, because for in L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before reception - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before reception L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before the accident - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before A-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself before the commandment - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before from L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and even before - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before the - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before the antecedent L. 4. Treatise 5.

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it holds even before anger - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and before anger - L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds itself even before angrily - L. 4. Treatise. 5.

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Of the seventh precept of the Decalogue. Infinite, it holds even before [it is] arranged - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before arrays - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before arrangements - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before arranging - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before arranging - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before arrangement - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds itself even before arrangements - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before arrangements - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before the arrangement L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before the altar - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before the altar - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before Arabia-L. 4. Treatise. 5.

On the seventh precept of the Decalogue. Infinite, it holds even before the Arabs - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before the Arabs - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and before armed - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and before armed - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before arms - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before arms - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before armies - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before armies - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and before Arms - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before Arm- L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even before the Armed - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds itself even before armored - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before armor - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even before armor - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before A— L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and before about-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even before about L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and before A-b L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before Above-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before AB-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even by itself before ABC-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before ABC - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before ABCD - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before Ad-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before AD-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before AD-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself before AE-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and before Aelius L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even itself and even before AF-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before AF-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and before Ag- L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before AG- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before Ah-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself and also before AH-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before AI-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before all-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even before All-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before Am- L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even before An-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even itself before Ann- L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before AN-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before AO-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before Ap-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even by itself before AP-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before AR-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before Arr- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before the Law - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it

holds even itself and also before AS-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before At- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before AT-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before AU-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before AV- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before AW-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before AX- L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before AZ-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even before BA- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BB-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before BC-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before BD - L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BE- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BF-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even before BG-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BH-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BI - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before BJ-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even by itself before BK-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before BL-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BM- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even itself before

BN-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before BO-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BP-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BQ- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even itself before BR- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before baptism - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BT - L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BU- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before BV-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before BW-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even itself before BY- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even itself and even before CZ- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before DA-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before DB-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before DC- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before DD- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before DE-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even before DF-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before DG-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even itself before DH-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even before DI-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before DJ-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even itself before DK-L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even before DL-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before DM-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before DN-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even before the Law - L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before DP-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even by itself before DQ-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even before DR- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in part DS-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even in part according to DT- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part DU-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even in the case of a double violation of DVL. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part DW-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even in anticipation DX- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in absence. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even inanimate DZ- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part EA-L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even without EA- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part EC-L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even in part ED-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even without ED- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even in part EF-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in part EG- L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even in part EH- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part for the same antecedent EI- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even without EJ-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even without EK- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even without the sacrament of Penance - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part EM- L. 4. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even in part EN- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in part. Treatise 5. Of the seventh precept of the Decalogue. infinite, it holds even without that EP-L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part EQ- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even in part ER- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in part ES- L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even in part and entirely ET L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even for an ant EU- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even in part EU-L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in part EW- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even in part EX- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. infinite, it holds even in itself FY- L. 4. Treatise. 5. Of the seventh precept of the Decalogue. infinite, it holds even in part GZ- L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even without an antecedent - L. 4. Treatise. 5. Of the seventh precept of the Decalogue.

Infinite, it holds even in itself and also in another - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in part. - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it is valid itself also an- th- L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even against voluntary acts - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even against an ant-j. L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it suffices itself even without antecedent k—L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even in itself and also in antel—L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it suffices itself even without amendment - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it suffices itself even without assistance - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it suffices even an ant. - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it suffices even without amplification - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it suffices itself even without assistance - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it suffices itself even without prayer - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it suffices even anoint—L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even without - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it suffices even without antecedent - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even in itself and also—L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it is valid itself even without - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even in itself and also in antix - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even in itself and also in another - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even without amendment - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it suffices itself even without - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it suffices even without - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it suffices itself even without - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it itself also avails—L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it itself also holds - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even otherwise - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it holds even itself and also—L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it suffices itself even without - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it itself is valid even now - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it itself is valid even then - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it itself is valid even then - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even now - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it itself holds even here - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it holds even now - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it itself holds even now - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it holds even now - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it holds even now - L. 4. Treatise 5. Of the seventh precept of the Decalogue. Infinite, it itself holds even now - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it itself is valid even then - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it itself holds even now - L. 4. Treatise 5.

Of the seventh precept of the Decalogue. Infinite, it itself holds even now - L. 4. Treatise. 5. Of the seventh precept of the Decalogue. Infinite, it itself

holds even now - L. 4. Treatise. 5.

Of the seventh precept of the Decalogue. Infinite, it itself is valid even now - L. 4. Treatise. 5. Of the seventh commandment: it will be accepted before the announcement; for it is not sufficient that it be accepted before others. 2. c. 18. dub. 6. n. 43. . art. 2. n. 9. with Sancio, and many against Sylvius and others. If however a donation is offered by means of letters, they say that it is necessary to require that either the letters be returned or a messenger bring word of acceptance, so that the donation may be valid. 719. — Whether after the death of the donor a donation can be validly accepted.

It distinguishes. 2. c. 48. n. 44. vers. You shall fall, when it pleases Him. Si donatio jam facta est et donans ante mortem mittat nuntium aut epistolam, tunc censet posse acceptari. Reason, because the donation remains virtually in the letters or missive sent.

And the same is probably held . 1. 4. d. 6. n. 5. and . n. 75. Lugo. d. 23. num. 75. and 84. art. 2. But they deny this more probatively, Lopez and Isern. Tirag.

Ten times, and others among them, they consider probable n. 75., because after the death of the donor his will cannot be united with the consent of the donee for acceptance to be required. Here arises the doubt: whether the donee can retain the thing given, if the gift was accepted after the death of the donor? From these two probable opinions I infer my judgment, that if he has accepted in good faith, and has already acquired legitimate possession, justly may he retain it. Thus, if with evil faith or doubtful, as stated in n. 764 where we held that it is not possible to commence the aforementioned legitimate possession with doubt, even though positively. — But if, they say, Lugo n. 75 and following, since the donation has not yet been made but only ordered by the messenger, then the donation after the death of the donor cannot be accepted any further; and l.

Between causes. ff. Mandate, etc., where the mandate is expressly declared to expire after the death of the one who gave it. Nevertheless, this does not prevent Sa from saying that a donation can be accepted, because this mandate, since it is a certain grace made, does not expire with the death of the one who gave the mandate; and for this reason they consider it probatively meritorious. Here added to the first sentence they say n. 21.

Croix l. c. et cum Mol., quod si res culpè nuntii non sit tradita ante mortem

mandantis, nunius tenetur ad duplicem restitutionem, nempe haeredibus defuncti ratione rei, qua ad ipsos pertinet; et donatario ratione damni illati. But according to the second opinion, it is held that the donee is bound only to make restitution, as say Sa, v. Donatio, 8. t. 4. c. 4. §. 8. n. 44. et probabile putant Sporer et . o. However, it should be noted with Lugo number 78.

Mol. ac . exe. ed. t. Inter causae, quod si donatio facta fuerit à nuntio, inscio mortis mandantis tam nuntio quàm donatario, tunc donatio valebit, ut clare colligitur ex ead l. Among the causes, where it is stated: If nevertheless (the command) was fulfilled through ignorance, it is said that the action competes for utility's sake. prabend. in 6.; for in the first text it is only said that a donation holds by a mere agreement, even if no stipulation has intervened, which cannot be denied; but there nothing is said about a non-accepted donation. In altero autem textu agitur de beneficiis, ubi dicitur, quod si Episcopus conferat clerico absenti aliquod beneficium ipso ignorante, nequit collationem revocare; sed alia est collatio beneficiorum, circa quae Episcopus aliam non habet facultatem, quam ea conferendi, et ideè facta collatione, nequit ipsam revocare: alia vero est donatio, quae nullam habet vim ante acceptationem. However, it is to be noted with reference to . l. 1. d. 6. n. 14., and . 3. n. 4., that if a donation has been made to infants, it holds valid even before the acceptance of the donee, because the law itself accepts on behalf of infants.

The same is taught in n. 36 and n. 2 of . 18 concerning a donation made to the city for the repair of buildings. 726 — But inquire whether a donation made for pious causes may be valid before acceptance? It affirms as above when speaking of matr. l. 4. d. 6. n. 46. The reason for this is that acceptance is required only according to positive and civil law, but not according to natural and common law. But more probingly they deny it, as point 4. §. 4. n. 69. states.

Robert et a. Reason, because for the donation according to the law of nature itself, as was said above, there is a requirement of acceptance, without which no gift is present. According to the other view, if a donation is made to God, namely: I promise God to give such a church, etc., because, since the intention is directed toward God, then the donation counts as a vow, as Sanchez and Sylv say. Rose.

They nevertheless note that a donation made to the Church can be accepted by any particular individual under the name of that (4). They also note Lugo, loc. cit., in the doubt regarding the intention of the donor, that it is presumed he had an intent to vow, because in matters pertaining

to piety, when a promise is made in absentia, commonly the intention is directed towards God. Doubt. 727. — Inquiry. 2. Whether a donation confirmed by vow can be revoked before its acceptance? He denies in the third section, fifth treatise, fourth chapter, note three, with Caecar: because a vow must always be kept and can be observed without sin. But commonly they affirm. L. 4, D. 7, n. 24.

I live according to contra questionem q. 8. article 2. n. 3. with ibid. n. 70. because a vow follows the nature of acts, namely donation, which is revocable by itself until it is accepted from the f. mali, c. de non numerata pectus. 728. — A donation made to an absent person may be revoked if it is annulled through no fault; however, a donation will only be valid upon acceptance: for mere acceptance before others does not suffice. . 2. c. 48. dubium 6. n. 43. . article 2. n. 9. with Sancio, and many other centuriators Sylvius and others. If however a donation is offered by means of letters, they say that it is necessary to require that the letters or the notice of acceptance be sent back, so that the donation may be valid. 729. — Whether after the death of the donor the donation can be validly accepted. It distinguishes 2 c. 48. n. 44. vers. You shall fall, when it pleases Him.

If the donation has already been made, and the donor sends a message before his death, prior to the letter, then it is considered that acceptance can be received. Reason, because the donation remains virtually in the letters, or when the messenger is sent. And the same is probably held . 1. 4. d. 6. n. 5. and . n. 75. Lugo. d. 23. num. 75. and 84. art. 2.

But they deny this more probatively, Lopez and Isern. Tirag. Decias, et alii apud [some authority], et probabile censent [certain individuals] n. 75., quia post mortem donantis nequit voluntas ejus uniri cum consensu donatarii ut ad acceptationem requiritur. This doubt arises: whether the donee can retain the thing after accepting the donation after the death of the donor?

From these two probable opinions, by my judgment I infer that if he has accepted in good faith and has already acquired legitimate possession, justly he can retain it. Otherwise, if with bad faith or doubt, according to what is said in n. 764 where we held that it is not possible with doubt, even positively, to begin the aforementioned legitimate possession; but if, as Lugo says in n. 75, and if the donation has not yet been made but merely ordered by the messenger, then the donation after the death of the donor cannot be accepted any further through him who was sent; from 1. Between causes. ff. Mandate, etc., where it is expressly declared that the mandate expires after the death of the one who gave it.

Nevertheless, this Sa says that a donation can be accepted, because this mandate, since it is some kind of grace made, does not expire with the death of the mandator; and this, and ... 44. when Sperer hopes, and 3. t. 2. n. 220. they reasonably think it probable. Here according to the first opinion they say n. 21. Croix 1. c. et . with Molinists, they say that if the matter of the culpable announcement has not been delivered before the death of the one who commanded, the messenger is bound to a double restitution: namely, to the heirs of the deceased by reason of the thing which pertains to them; and to the donor by reason of the damage incurred. But according to the second opinion, it is held that the donee should restore only, as say S. Augustine, v.

Donatio, 8. t. 4. c. 4. §. 8. n. 11. et probabile putant Sporer et o. However, it should be noted with Lugo number 78. Mol. ac. ex ead. 1. Among the causes, if a donation was made by an envoy unaware of the donor's impending death, both the envoy and the donee being unaware, then the donation will be valid, as clearly gathered from the same 1, Among the causes, where it is stated: If, however (the mandate) through the simple ignorance of those involved is considered to be in the interest of utility, action is said to compete.

Treatise 5. Of the seventh precept of the Decalogue. But it is common that a vow is confirmed by death or by the death of the father. On the contrary, similarly it is valid in cases as above recently enumerated for a donation between spouses: either if there be a cause of studies, or if there be a cause of marriage; or if the child be merely natural; or if the father gives the fruit of adventitious property to his son.

These nevertheless are understood, unless the donation be officious (see no. 740.), namely, harmful to the legitimate children of another or creditors; see no. 404. Tapia et qui notat donationes factae a matre, vel a filiis parentibus, per se firmas esse. • 5. The donation made by the father to the son for the sake of studies is valid; nor is the son bound to compute it in legitimate assets, first because it was in lieu of maintenance; secondly, because if it be deducted, then it would no longer be a donation contrary to the hypothesis. Wading. and 6. others with t. 6. r. 23. and 29.

But it is limited, unless it be certain that the contrary intention was in the father. That is to say, if it is not certain regarding this matter, then it should be presumed about the father's piety that such expenses ordinarily after the father's death not enter into the inventory of goods, nor should they be distributed in common, unless the father has testified that he wishes them to be included in the legitimate computation. Thus also Wading. » from the margin.

If the father dissolves the family according to two laws. (Vide n. 955.) (1) « 6. If the father purchases for the son the office, the price should be reckoned in the division among the brothers: but not if he obtained it gratis from the prince; nor what has been instituted by the father as a merit to the son, because they are quasi military spoils. Mol. tr. 6. r. 127. and 128. 725. — » 7.

Donatio ante acceptationem non proicit obligationem, neque naturalem quidem; potestque revocari, etiamsi voluerit se absolutus obligare. Presently, and when done in silence, it is deemed by him as accepted; because in matters favorable it is held to be equivalent to consent. Molin. et alii 48. t. 6. r. 89. 98. et 408. For another, no one can accept it without a special commission unless a donation is made by the Church or for a pious cause; for it to be valid and irrevocable without acceptance is probable. c. r. 106. et p. 3. t. 5. resp. 407.

In many cases, however, provided that the words are directed to the present, a father or mother can act for the son, even if he is emancipated; a tutor for the pupil; a curator for the minor; a filius familiae for the father; a servant for the master; a monk for the monastery; and, according to many, anyone who bears another's care, such as a prelate for a religious person, a husband for his wife, a master for his servant, etc., can stipulate. Furthermore, the same is permitted to judges and public notaries. . t. 6. r. 97. (2). (1) Art. 852. Expenses for food, cult, education, learning an art, instruction concerning things (equipment), marriages and gifts made according to custom should not be referred to as legitimate.

Refer to the articles indicated at note 854. Article 982. The donation made between living persons does not oblige the donor unless it has been previously accepted by express words. It can be accepted by an act subsequent to the donation, provided that the donor is still alive and that the acceptance itself has been signified. Chap. 3.

Of contracts. Dubium 2. It is common opinion (whatever may be said in res. 116) that a donation prior to acceptance does not impose any obligation; thus Lugo, De contr. d. 23. n. 38. cap. XI. Question 2.

Habert De contract. tom. 4. p. 3. c. 18. q. 1. Conclusiones, tomo 2, librum 9, distinzione 5, nota 13. Wigandt translated chapter 4, number 53, verse v. I have said 3.

Antoine in part 1. Dog. §. 1. n. 2. France from præc. ani- mad. 2. . 2. c. 18.

dub. 8. n. 34. Soto on justice, lib. 3, qu. 3.

Sanctius de matris l. 1. d. 6. n. 10 et c. 4. punct. 4. §. 1. n. 68 cum . Tapia, et aliis. And this is more true, as Lugo and Sol. prove, that it does not proceed solely from positive law, but also from natural law, or at least from the law of nations, as was proven from l. Absent. ff. de Donat. ubi dicitur: Si nesciat (donatarius) rem qua apud se est, sibi esse donatam, donatae rei dominus non fit, etiamsi per servum ejus, cui donabatur, missa fuerit; nisi ea mente servo ejus data fuerit, ut statim ejus fiat.

The reason is that a contract cannot be concluded without the consent of both parties; as wisely reasons the most learned Cardinal Lugo, no one can acquire any right in alien matters by natural law without such consent; hence, without acceptance of the donation, no transfer of right occurs to the donee regarding the donated thing; and therefore, before acceptance of the donation, the donor can indeed revoke at his own will whatever thing he has kept immune from any obligation. Neither does it hinder l. If anyone gives silver, §. But if there be otherwise, c. de Donat.; for therein nothing else is said than that donation avails, even though the thing given has not been delivered. It does not hinder the law.

Nec ambigi, c. de Donat., ubi habetur donationem absentibus factam satis valere; respondetur enim (ut explicat Glossa) id intelligendum, cum donatio acceptata fuerit per epistolam, aut nuntium, aut servum, ut habetur in l. If anything 13th chapter of Don. verse 13. And even through the mediation of four enactments concerning donations and the cited passage. If concerning you absent, from Article 933.

The donor who is greater [in capacity] can immediately accept the donation himself or through a procurator specially instituted ad hoc before a notary. Article 934. A uxoret nullam accipere potest donationem absque coniugi consensus aut judicis auctoritate. Art. 935.

Donatio facta interdicto vel minori non emancipato à tutore acceptari debet. An emancipated minor, with his curator assisting, can accept a donation; Moreover, father and mother of the minor, whether he be emancipated or not, or even if they are living parents ascending in degree, though neither tutors nor curators, can validly accept a donation on behalf of the minor. Article 936. A deaf-mute person, whether acting personally or through a delegate, accepts a donation provided that he can write; but if he cannot write, then a special curator appointed for this purpose will accept it on his behalf.

Art. 937. Donations made to churches, inns, and public institutions, are accepted by their administrators with due authority. Art. 1087. Jonations in contractu matrimoniali factè numquam invalida dici pos- sunt ob defectum acceptationis. præbend. in 6.; nam in primo textu tantùm dicitur, quòd donatio per nudum pactum tenet, etiamsi nulla interfuerit stipulatio, quod negari non potest: sed ibi nullum fit verbum de donatione non acceptata.

In another text, however, it is spoken of benefits, where it is said that if a Bishop confer some benefit upon a cleric absent, without knowing about it, he cannot revoke the consecration; but there is another kind of conferring of benefits concerning which the Bishop has no other power than that of conferring them; and hence, having once conferred and consecrated, he cannot revoke this consecration: whereas donation is altogether different, possessing no validity before acceptance. However, it must be noted according to . l. 1. d. 6. n. 11., and . 3. n. 4., that if a donation has been made to infants, it is valid even before the acceptance of the donee, because the law itself accepts on behalf of infants. The same is taught in n. 36 and n. 2 of . 18 concerning a donation made to the city for the repair of buildings. — But inquire whether a donation made for pious causes may be valid before acceptance? It affirms as above when speaking of matr. l. 1. d. 6. n. 16.

The reason for this is that acceptance is required only according to positive and civil law, but not according to natural and common law. But more probingly they deny it, as point 4 section 1 number 69 states. Row. eta. Reason, because concerning the inheritance according to the very law of nature, as was said above shortly, reception is sought, without which there is no gift at all.

According to the sequence of speech, it must be said that if a donation is made to God, namely: I promise God to give such an Church, etc. For when the intention is directed toward God, then the donation counts as a vow, as Sanchez and Sylv say. Rose. They nevertheless note that a donation made to the Church can be accepted by any particular individual under the name of that (1). They also note Lugo, loc. cit., in the doubt regarding the intention of the donor, that it is presumed he had an intent to vow, because in matters pertaining to piety, when a promise is made in absentia, commonly the intention is directed towards the vow. Doubt. 727. — Inquiry. 2. Whether a donation confirmed by oath can be revoked before its acceptance?

He denies in the third section, fifth treatise, fourth chapter, note three, with Caecar: because a vow must always be kept and can be observed

without sin. But commonly they affirm. I. D. 7. n. 26. I live according to contra q. 8. art. 2. n. 3. cum ibid. n. 70. cum quia juramentum sequitur naturam actis, scilicet donationis, quæ de se revocabitis est, donec acceptetur ex f. mali, c. de non numerata pecuna. 728. — Donatio facta absenti, et per mentium fiat, potest revocari; donoc coram nuntio acceptetur: non enim sufficit, si acceptetur coram aliis. . 2. c. 48. dub. 6. n. 43. . art. 2. n. 9. cum Sancio, et pluribus centrd Sylv. et alios. If however a donation is offered by means of letters, they say that it is necessary to require either that the letters be returned or that notice of acceptance be sent, so that the donation may be valid. 729. — Whether after the death of the donor a valid acceptance of the donation can be made.

Distinguishes 2 c. 48. n. 44. vers. You shall strive with Mol. Si donatio jam facta est et donans ante mortem mittat nuntium aut epistolam, tunc censet posse acceptari. Reason, because the donation remains virtually in the letters, or if the gift has been sent by courier.

And the same is probably held . 1. 4. d. 6. n. 5. and . n. 75. Lugo. d. 23. num. 75. and 84. art. 2. But they deny this more probatively, Lopez and Isern. Tirag.

Ten times, and others among them, they consider probable n. 75., because after the death of the donor his will cannot be united with the consent of the donee for acceptance to be required. Here arises the doubt: whether the donee can retain the thing given, if he has accepted the donation after the death of the donor? From these two probable opinions, by my judgment I infer that if he has accepted in good faith and has already acquired legitimate possession, justly he can retain it. Otherwise, if with bad faith or doubtful faith, according to what is said in n. 764 where we held that it is not possible with doubt, even positively, to begin the aforementioned legitimate possession; but if, as Lugo says n. 75 and following, the donation has not yet been made but has merely been ordered by the messenger, then the donation cannot be accepted after the death of the donor; and 1.

Between causes. ff. Mandate, etc., where it is expressly declared that the mandate expires after the death of the one who gave it. Nevertheless, this does not prevent him from saying that a donation can be accepted, because this mandate, since it is a certain grace made, does not expire with the death of the mandator; and this, and ... 44. with Sporer, and 3. t. 2. n. 220., they consider to be rightly probable. Here according to the first opinion they say n. 21.

Croix 1. c. et . with Molinists, that is to say, if the matter of the accusation

has not been delivered before the death of the one who commanded, the accused is bound to a double restitution, namely to the heirs of the deceased on account of the thing which pertains to them; and to the donor on account of the damage incurred. But according to the second opinion, it is held that the donee is bound only to make restitution, as say Sa, v. Donatio, 8. t. 4. c. 4. §. 8. n. 44. et probabile putant Sporer et . c. Adventendum tamen cum Lugo num. 78. Mol. ac . exe. ed. i.

Among the causes, if a donation was made by an envoy unaware of the donor's death, both the envoy and the donee being unaware, then the donation will be valid, as is clearly gathered from Ead, i. Among the causes, where it is subordinated: If nevertheless (the command) has been simplified through ignorance, it is said that the action competes for the sake of utility. 731. — It is asked whether, after the death of the donor before acceptance, his heir can accept the donation? He affirms at loc. n. 6 with Molina. However, they deny more probabily at 2. c. 18, num. 35, and punct. 4, § 1, num. 74, namely, because the heir succeeds in the real rights of the deceased, not however in personal rights, as is the law regarding accepting a donation. However, it is conceded 732. — “8.”

Even though you accept a verbal donation (1), e.g., "Cajus gives you an absent horse; you do not acquire a right in the thing and ownership of the horse before the act of delivery. Wherefore, if meanwhile Caius should give or sell him to another and hand him over to him, he acquires dominion; but you have an action against Caius on the ground of injury in respect to the thing, which you had a right to. And thus a donation purely verbal before real transfer, that is, before the tradition of the thing, differs very little from a promise, according to 2. 733. — « 9. Donation, as well as remission of liquid debts, made once and with one act of mind, whether to one or more persons, exceeding the sum of 500 solidi (which sum today amounts to about 700 gold florins, or according to some, 800 Italian gold coins, as noted by Claro, etc., in 3. tr. 4. c. 12. n. 45), does not hold with regard to this excess; but, the law so ordaining for the common good, it can be reclaimed at the discretion of the donor.

Receive except where the donation has been insinuated by a judgment, or confirmed by an oath, or made for pious causes, or for the redemption of captives, or for the repair of buildings destroyed by fire or ruin, or where it is reparative of benefits, or where it amounts to a renunciation of rights, at least of those claimed in good faith, or finally where it is given by the commander of the army from his own movable goods, or from the spoils of the enemy. See chapter 18, book 2, note 102, third part, fourth book, chapter 12, note 15. Tanner d. 6. de just. q. 2. dub. 2. n. 15. ex si non repetatur, potest retinere. See authority cited.

The same is said regarding the donation of all goods. . punct. 5. §. 2. n. 97. et seq. (2). 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 (1) Art. 931. The donation inter vivos before a notary should be made in the form of ordinary contracts, and its first draft (gall. minule) should be retained under penalty of nullity. Article 938. Illicitly accepted, it is fully completed and the dominion transfers without delivery.

Art. 939. If a donation is made of goods that can be burdened with a mortgage, the act of the donation and its acceptance must necessarily be recorded in the registers of mortgages. Article. 948. Whenever the donation of noble things is made by means of a public instrument, so that it may be valid, it is required that an appraiser's index of the things donated be subscribed by the donors and donees or acceptors, and joined to the first prescription of the donation.

Edit. (2) 1182. The voluntary remission of debts, honored by the hand of the creditor, releases the debtor. Article 913. He who has a single son can himself be able to alienate him through a will or donation. Chapter 3.

Of contracts. Dub. 2. 736. — " 10. If a condition is appended to a donation, either tacitly or explicitly, it does not obligate in any way, but merely desires or hopes for something; or another thing will be done; or with intent to incline his mind to this, the donation suffices, even though the end may not follow: e.g., someone gives something to a girl with the intention of eliciting her consent; if she later does not consent, he is not bound to return the gift: for although he would not have given it had he known that she would not consent to him, yet he gave absolutely without any other obligation, as is stated. It would have been proper, if he had truly intended to obligate her and had given with this condition. Dub. 16 and 17.

Thus in 2nd part, question 18, note 424, and point 6, number 165 with v. Question. Second. But rightly do they observe at the end, that a girl receiving a gift after an illicit request will more difficulty be excused from the sin of scandal, according to S. Th.

It is added in the same place that, if a legacy be left to the maiden so that she may marry, it can be retained from her even if she remain unmarried; and, if she die before marriage, the legacy passes to the heirs of the maiden. Cum autem donans intendit ad aliquem finem obligare, si finis est principalis, debet donatarius illud præstare, nisi ab alio impediatur. If however the end be secondary, then the donation is not nullified, but can

be revoked by the donor. Ita cum Medin.

But he adds that if something is given to a monastery under some condition, it cannot be reclaimed if the condition is not fulfilled, but only compel the monastery to fulfill it, if it can. 735. — It is asked whether one who rashly promises a woman something on account of coition is bound to give it after coition? Lugo affirms, in the same place, number 166. Because, upon the setting of the promise, then the giving is due, not prodigal. They, however, deny this more probabily, Sotus and Bona, loc. cit., num. 167: even if there be a vow, because a promise does not make a prodigal giving illicit to be; hence the thing promised is to be reduced to equality according to common estimation; and if it is an indivisible thing, nothing is owed.

See what is said concerning the matter in lib. 6. cap. 854. vers. v. When however. It must nevertheless be admitted that an honorable woman can receive as much for the use of her body as is taught in 2. c. 14. n. 53. 736. — « 14. In similar alluring donations, someone can accept them, for instance, the aforementioned girl, even though they do not intend to provide what the donor hopes, since the donation is absolute; it is done with an intent to allure, not to obligate. Hence, if frustrated by hope, they may repeat the action, saying they did not give anything except a part of their goods under such condition; for truly, if she has two, yet if there are three or more for them.

Art. 914. Nephews are reckoned among the children, but only as regards the head from which they descend. I Art. 915. Qui ascendentes habent in utraque linea, tantum dimidiam partem bonorum donare potest; si vero ascendentes habeant in altera lineâ tantùm, tres ex quatuor parti tibus dare possunt.

Article 916. He who neither ascends nor descends rightly in a line, can dispose of all his goods both during his lifetime and by testament. Edit. The girl is not bound by obligation to believe: because, precisely because the donor did not express a condition, it is presumed that he gave without such a condition, and to revoke it either out of animosity or to extort consent. . c. t. 2. misc. r. 40. 737. — « 42.

A donation is not held valid on account of a past or present cause that is not truly such, for example, if I give you something because you have transgressed against my lord: or because you are poor, and in reality it is not so; to restore it would be an error in the formal cause, and in the principal. Wherefore those who lie and say they are poor when they are not, ought to restore alms to others who are truly poor. It is different if the

error lies only in a secondary cause; for example, if they are truly poor and additionally pretend sanctity to provoke men's compassion; because then the primary intention of those giving is to give to the poor. Bon. t. 6.

Response 89. It teaches however, Book 2, Chapter 48, note 429, that if there is an error regarding a secondary cause, even though the donation may not be blameworthy, it remains open to criticism from the donor; but rather, if the donee is the cause of the error, he himself is bound to uncover the error unless the donor has such an intention that he would be considered not to revoke the donation, even if he recognizes the error. In dubio autem ait. See Sed Croix n. 64. adheres to ## DUBIUM III. ### In which cases can a donation be revoked? 738.

What if the donee be ungrateful? 739. What if the donor should beget a child after the donation? 740. What if the donation should prove to be inept? 738. — “R ESP. 4. Donation inter vivos, hoc est, quicumque vult se vivo alterius rem absolutè esse, potest revocari (etsi res jam tradita sit) in tribus casibus; nisi tamen donatio fuerit remuneratoria, aut facta sit Ecclesiae vel monasterio.

A conditional donation can be revoked by the donor stipulated, so that the goods might return to him if the donee or the donee together with his descendants should die before him. Article 952. By this revocation of the donation, goods given in any manner whatever from the donee or his descendants are returned to the donor free from every hypothec and from every burden, except for an immediate hypothec for securing dower. Art. 953.

An absolute donation inter vivos cannot be revoked except on account of the neglect of conditions appended, ingratitude of the donee, and the coming to age of the donor's offspring. Art. 954. The donation is revoked on account of the neglect in the execution of the appended conditions; all goods return to the donor free from every burden. Art. 955.

A donation inter vivos can be revoked on account of the ingratitude of the donee: 10 If he has attempted to bring about the death of the donor; 20 If he has used violence against the donor, committed crimes, or inflicted serious injuries upon him; 30 If he has denied him necessary sustenance. ## Chapter 3. Of contracts. Dub. 3. ## These are however the cases: • 4. If the donee has grossly abused the gift: for instance, if the donor inflicts atrocious injuries upon him, if in poverty he does not assist, etc., what must be noted for children to whom parents have given everything and then neglect them. Sylvest. c.17, d. 12. (Add, if the donee is defiled with a widow or daughter of the donor.)

See point 5, no. 107: A contract is not valid such that a donation cannot be revoked on account of ingratitude. Bartol. et alii 8. Lugo, t. 6 r. 57. Gratitudo coram judice debet probari; ante cujus sententiam donatorius non tenetur restituere.

Molin. Lugo, et alii 4. . c. r. 58. • after that very same, he also contests the fruits received after the lawsuit. 58. From heirs, however, it cannot be revoked on account of those causes on account of which the donor himself could have done so if he had known and kept silent about them; or if he did not know them. 54. • 2. And indeed, revocation also has a place in a legacy with respect to the legatee, if the deceased testator be gravely injured by her, for instance, if she carnally know him. 58. • 3.

However, it does not have a place I. In donations made to the Church, although the prelate or cleric may have been ungrateful, because they were made for the good of the testator's soul, and principally for God, who cannot be ungrateful. II. In a compensatory donation (for example, for benefits otherwise not due and somehow equivalent), since compensation is more appropriate than a gift.

Remuneratoria autem censetur 4. si donator in ipsa donatione expressè meminerit meritorum; vel 2. si de meritis constet; 3. in dubio. . c. r. 415. 416. 417. 419. 420. æv. Article 956. The revocation on account of the neglect of the execution of conditions or ingratitude of the donation cannot by itself be justified. Art. 957.

The action should be instituted within a year from the day on which the offense could become known to the donor by right. Art. 958. The revocation for the cause of ingratitude cannot harm those to whom goods have been given and who were thereby obligated in some manner before the petition for revocation was inscribed on the hypothecary registers. Art. 959.

Donations made in grace of a marriage and out of ingratitude cannot be revoked. Art. 960. Supervening legitimate or posthumous legitimate offspring, even those made legitimate by subsequent marriage ipso jure revoke any donations made in gratiam matrimonii, whether made on any title whatsoever, even by someone other than an ascendant or spouse. Art. 961.

This revocation shall obtain, even though the offspring had already been conceived at a time when it was considered to be from another man's

lineage; Art. 962. And although gifts have already begun to be possessed by those who give them, and even when offspring come forth, permission may still be given by the donor for them to continue to be possessed. Article 963. By reason of the supervening offspring in the donation having been revoked, all goods return to the donor free from every burden and encumbrance.

Art. 964. Such revoked donations do not revive, whether through the death of the offspring or through confirmation by the donor, but a new disposition is necessary. Edit. 739. — • 4. If anyone, lacking offspring, shall have given away a great part of his goods in donation, and afterwards children are born to him; because, according to the disposition of law, this tacit condition is inherent in such donation, unless free children be born to me.

And indeed, if it has been given to a stranger, the whole gift can be revoked: but if it is given to some ascending person, such as a father, or grandfather, or the Church, or for pious causes, only so much can be revoked as is necessary that the children may have legitimate rights. Although it is noted that this oath does not exclude the aforementioned tacit condition. Receive it, unless this condition is also explicitly excluded: for then himself he could not revoke; nevertheless, his children could revoke it after his death. Good day.

Et tamen talis revocatio habebit locum, si nascantur filii illiciti, qui postea legitime facti sunt? See c. r. 63. and 64. Moreover, in a remunerative donation, res. 65., where Mol. and six others deny it, unless it exceed the cause. (Nevertheless, however, the donor can retain the thing until it is reclaimed by the donor himself, . 2. cap. 18. n. 110.) Pad. 740. — » 5.

If the donation has been made in an officious manner (1), contrary to the duty of paternal piety, as when a father gives solely, so that the portion bequeathed to the children is thereby deprived: then after the death of the father, the children may revoke it. Even though the donation may have been confirmed by a vow. Megest. et alii 5. t. 6. r. 66. Nay, even while the father is alive; for although it is not due to be handed over before the death of the father, it is nevertheless due to be preserved. Hence, if the father dissipates his goods, he can be compelled by judgment of the son to preserve the legitimate share, lest after the death of the father the son lack sustenance.

Thus it is probably against the Notandum, that a donation, if it is inofficious merely re ipsius, is weakened so far as the part wherein the sons are defrauded: but if it is in re et consilio, scilicet animo fraudandi

filios, then the whole is weakened when it is extricated; whereas when it is given to others descending, or for pious causes, even that which is merely a part is weakened. . 2. cap. 18. dub. 14. n. 112. §. 4. n. 144. cum. 6. resp. 66. P. Concina tom. 7. pag. 441. n. 13. You descended. Book 6, chapter 29, note 4, according to Bartolo, law 4, chapter on inofficious donations, and from l. If all five and one.

If the mother, chap. 7, same title. It must be noted that in such a case, Donaturius is not bound to restore anything to the heirs before the judgment of the judge. Thus . when . Next, it must be noted according to 3. part. 4. title 42. number 18. number 39. etc., that parents, although they cannot diminish legitimate children's inheritances through donations, can nevertheless impose burdens through contracts and provide reparative donations.

But Cardenas with Lop. Vega, Cord. in Croix, lib. 3, p. 2, num. 842, say that a father can appropriate his goods for pious works, even to the prejudice of his legitimate children, provided they are not deprived of the nourishment due to them by natural right, because civil law cannot prejudice pious causes. But to this opinion they contradict: both sentiments seem probable. - 6. By the advent of the children, as Diana affirms more probabily - p. 8, tractate 6, reason 78, from others against certain individuals. If however the father does not revoke, it cannot be revoked by the children subsequently born, unless for a reason of infanticide, whether from a will or from intestate succession, ibid.

DOUBT IV. What is a donation made by reason of death? And whether it can be revoked? And how, and to whom, can it be competent? When is a donation considered revoked for cause of death? Is this donation valid in absentia? Who can give a donation for cause of death? 741. — R esp. 4.

The donation made for cause of death (1), by which one gives in such a way that he wishes something to belong to another first after his own death, namely, if you say, "I give this to you—this after my death, or when I am about to die, or because I fear now that I shall die," can be revoked even in three cases: "(In doubt, the donation is to be considered among the living and irrevocable." Lugo, Prado, Sylv. de contract. c. 4. punct. 5. §. 5. n. 143.) - 4. If the donor regrets the donation, whether expressly or implicitly, as if he were to give that thing to another, 2. If he gave with an intention of some imminent peril from which he fears death, thereby escaping that peril, the gift is considered tacitly revoked; for instance, if someone gives while gravely ill, or in the midst of a pressing battle. Question 43. p. ult. n. 20. - 3.

If the donee dies before the donor, ipso jure the donation is revoked: just as also happens in testaments and legacies. So it is in a promise, and in a donation inter vivos, which passes to the heirs. That is to say, if the donor promises that he will not revoke it, it passes over into a donation inter vivos. - See d. 44. n. 419. Mol. d. 286. et d. 288.

Azor l. 44. - c. 41. q. 4. Bon. l. c. (1) A simple donation mortis causa is not expressly mentioned in the Codex civilis as a special mode for disposing of goods according to the reason of death; if however it is admitted, one must say that it does not hold in the civil forum unless the constituted formula be observed as in wills. . 470 Lib. 4. Treatise 5. Of the seventh precept of the Decalogue. 742. — « Resp. 2.

This donation ought to be made in the present. Dimas loc. cit. r. 66. et alii 5. It is invalid in absentia without a summons for this decision, either by personal notification or letter: although it may be valid as a testamentary disposition if witnesses were present. 743. — « I respond 3. All can give by reason of death, and those alone who are able to make a will, except for a ward, who although he cannot contract a testament in any way, since this is of public law, yet he can still give by reason of death, which is of private law, if the father's express consent be present: nay, without this he holds that it is probable that such a gift could be made both of those within the camp and also of outsiders. c. reg. 68. et 69.

» (If indeed the son has by permission of the father an usufruct and administration of these things, as stated in point 5, section 5, number 416, even without the consent of his curator . c. res. 74. ex Mol. et alius. Notwithstanding, a usurer cannot be appointed unless he has first satisfied the usury or provided security; yet he may be appointed to pious causes. . r. 73. ex . Neither a natural deaf-mute, nor one who has become so by accident (if he is merely deaf or mute), may according to some give during his lifetime. Azor, t. 6. r. 42. ## DUBIUM V. ### What is a commodatum, a precarium, and a depositum? 744.

What is a commodatum? What is a precarium? And when shall the precarium cease? What is the depositum? See cases concerning the commodator. See concerning the depositor. How shall the depositary sin by using the thing deposited; and what is he bound to restore? Are these held liable only through legal fault? To what purpose are craftsmen bound, to whom things are delivered? In doubt, shall presumption be made of fault? Who is bound to save another's thing rather than his own? See elsewhere in the same place 753. In what cases may the depositor be able to deny the return of the thing deposited? 744. — « Resp.

A commodatum is a contract by which some movable or immovable thing is gratuitously conceded for use solely, and is explicitly or implicitly determined for some certain time: explicitly, as if you were to say, I lend you this book or house for one month; implicitly, as if you were to say, I lend you this book that you may describe it, because then the time is implicitly determined only so much as is necessary for a convenient description. Chapter 3. On contracts. Dub. 5.. 745. — "Precarium est, quo conceditur petenti res utenda, non ad certum tempus, in quo differt a commodato, sed donec condens repetat, sive expressè, sive tacite, ut si det alteri, aut vendat."

Chapter 3, Title 4, Decretal 14. A precarium ceases through the death of the receiver, not through the death of the giver, unless it is revoked by the heirs. L. When a precatory instrument ceases, it does so through the death of the recipient, not through the death of the donor, unless revoked by the heirs.

See q. 9, art. 2, num. 9. · 746. — "Depositum est, quo aliquid traditur custodendum, ut" integrum reddatur." And commonly a movable thing, or one that moves itself, » such as clothing, a horse, etc. Hence concerning this matters are resolved: 747. — « 1. The bailee cannot demand repayment without injustice before the defined time. Because if nevertheless damage hangs over the commodator, he can repeat it, even though a similar damage might have hung over the commodatary before by reason of the thing's previous repetition, as is contained in Decretum 5, for in hiring it is understood that this tacit condition holds, unless there has come to be some necessity for the commodator regarding the thing. Note with n. 7 that ordinary expenses should be made by the commodatary in regard to the thing hired, such as feeding a horse, etc., while extraordinary expenses are to be borne by the commodator, according to l.

In matters concerning loans, see Ff. de Commod. (1). 748. — « 3. If the depositary in good faith considers that the depositor will not be displeased if he makes use of the deposited thing, then it will be permissible to make use of it; otherwise, not. c. d. 2. (2). « 4. If the deposited thing is a consumable in use, such as wheat or wine, Article 1880. The commodataria is bound to regard the thing as a good father of a family would do, preserving it and using it only for that purpose which nature and the contract intend.

Art. 1881. If he shall use the thing for another purpose or for a longer duration; Art. 1882. If in a fortuitous calamity she could have preserved her own property from damage and did not do so; Art. 1883. If the thing

had been estimated before it was to be handed over to oneself, and no contrary stipulation had been made, it is likewise held bound for the loss of the thing due to fortuitous accident to be repaired.

Article 1884. If the thing commodated by force and without fault on the part of the commodator is impaired, the lord suffers a diminution. Art. 1886. It cannot be repeated the expenses which, so that a commodity might be provided, he caused to be made.

Art. 1888. He who has commodated the thing before the defined time, or before the intended use thereof has been made, cannot recover it. Art. 1889. Si commodans ex casu improviso re sua vehementer indigeret, eam ex sententiâ judicis commodatarius redders tenetur.

Art. 1890. The commodator is bound to restore all extraordinary, necessary, and urgent expenses which the commodatary has incurred in the matter being preserved. (2) 1930. The depository in no way can use what is deposited without the express or presumed consent of the depositor - money which having been exposed to risk and consumed should have been handed over with a certain number, - weight, and measure; it does not seem that the depository would gravely sin by using these things; if he were certain that when returned they would be of the same quality. Azor, c. 25, d. 1 (1). Ita etiam; cit., n. 4, cum Mol. vers.

Notat. Next it must be noted that the depositary, having used goods deposited with bad faith, is bound to restore the value of use; but if he uses them in good faith, he is bound to make reparation for what has been damaged when he understands that this displeases the depositor. Thus 3. with Hurt. When however the lord shall have granted the use of a consumable thing, even tacitly; then the deposit passes over to a loan, according to common opinion.

At least when the depositary actually uses the thing with the consent of the lord; 749. — "But if he to whom the thing has been commodated, located, deposited, or pledged negligently guards it, so that it perishes, and the negligence is not a mortal theological fault, it is probable, as stated by Soto and Sa, that one is not bound to restitution in conscience." » (As also held at point 2, §4, n. 32, with Lugo, in book 6, chapter 9, n. 2, etc., see the aforementioned note 554.) « However, others hold a different opinion, namely that restitution is required for those who have contracted a legal guilt in custody, even if it be slight; indeed sometimes even when it is extremely slight, specifically when the deposit was made for the benefit of both parties, and if they receive payment for the custody. See d. 8. . 4. cap. 25., ubi docet depositarium tantum teneri de dolo, vel culpa crassa, quae

dolo aequiparetur (1). Dicitur autem juridica culpa lata, seu crassa, cum quis facit, aut omittit, quod ut plurimum non facerent, vel omitterent in ea re homines suae professionis, ut v. gr., si quis rem apud se depositam relinquit in loco publico, etsi inadvertenter. Levis autem dicitur, cum quis facit vel omittit, quod facerent vel omitterent ho- mines suae professionis diligentes, ut si quis depositum relinquit in ## Cap. 3.

Of contracts. Dub. 5. "in his own chamber, but neglects to close the door." It is called very slight, when it does what diligent men would not have done, or omits to do; as if someone had observed the door, but neglected to test whether it was properly closed by touch. 750. — Dub. 5.

Tailors, weavers, and other craftsmen to whom things are entrusted for polishing or altering; likewise sailors and innkeepers, at which places things are deposited and kept, are held guilty even through a slight fault, because it is also for their own convenience that the deposit is made; indeed Sylv. v. The sailor wishes for them to be held culpable even for the slightest fault: according to law 1, chapter 1. Deposits, and that they are watched over to avoid their frauds. » That is also thought to be probable in both forums, if anyone has entrusted them with something to be guarded: but if they have received it only before their own eyes, as for example in a tavern, on a ship, etc., not even from a very wide perspective do they wish to hold them responsible.

See Bon. t. 8. r. 74. (1). 751. — « 6. If the bailee (who is the same as the borrower) doubts whether the deposited item has perished through his own fault, he is not bound in conscience to restore it, because presumption of guilt is not made in doubt, according to law. Worthily, for the sake of the partner.

See t. 9. r. 49. In the external forum, however, if the things deposited remain intact, presumption is made of fraud, unless the depositary proves that the deposit perished in an accident and could not have been preserved simultaneously with his goods (e.g., due to imminent fire): for then he would not be bound, because the presumption of fraud would cease. See concerning the assessment law, title 3, part 4, law 1, section 752. — Here is distinguished as a special rule with note number 2. When things are lost in fire, shipwreck, etc., if the contract is in favor of the giver and the thing given is either less valuable or equally valuable as your own thing; then you may prefer and save your own thing: but if the other person's thing is far more precious, in that case you can seek compensation for your lost thing.

If however the contract was for the advantage of the other party, then you

must prefer the thing of the lord, and cannot ask for compensation for your thing lost. And 9. art. 2. n. 2. cum communi. (1) Art. 1983. Innkeepers will provide credit for goods which travelers have left with them. Article 1983. Therefore, they will compensate the goods of travelers that have been stolen or made worse through the agency of others or by those passing through diversely.

Article 1984. However, theft executed by means of greater force with arms or otherwise ought not to be imputed to them. Art. 1782. Those who engage in the conveyance of land and maritime goods are held to obligations for the deposited things in the same manner as innkeepers.

Art. 1783. They will provide for the things to be transported, when first entrusted to them at the port or at the merchandise station (gall. entrepôt). Art. 1784. The loss and corruption of goods entrusted to them will be imputed to themselves, unless a fortuitous accident or a greater force be proven in the cause.

Art. 1789. Si artifices in rem alienam conficiendam nihil nisi operam contulerunt, rei jacturâ facient ad compensationem non tenentur, nisi culpa intercessit. Edit. "7." If to the lord who demands back the deposited thing he has remitted it through a man who was reputed as a thief, and has kept it for himself or lost it, Molina says that the lord says it perished. Cited by Escobar.

See Trull. l. c. (1). He who deposits something that is not consumable for use may receive something in exchange for its use from the depositor; because it is estimable by price (although in this case it be neither a deposited nor a leased and conducted contract to be called). Otherwise, if it be consumable for use: then indeed the deposit, by itself, when the depository begins to use it, assumes a nature of much value, from which (severed from the reason of profit ceasing, etc.) nothing may be received, as is seen in the dubium sequens and Bon. d. 3. qu. 13. p. 3. c. (2). 753. — It must be noted here that the depository can deny the deposit to the lord in four cases: 4. If by sentence all the goods of the depositor are adjudged. 2. If he understands certainly that the thing is stolen (3). 3.

If he himself has a certain cause for compensation (5). 5. If prudently and certainly he would judge that one would abuse what was deposited against justice, let him consider the sword for killing; because then he would sin by returning the sword, contrary to charity, as in 4. art. 5. num. 1. But rather, 2. cap. 16. d. 4. . 2. and they think more truly that he would have sinned even against justice: because he would very nearly have cooperated in homicide. See the aforementioned number 697.

I said, however, that certainly he should fear; for in doubt, or where there is equal probability regarding damage, the sword ought to be restored, unless the master is mad, so says he. But I do not acquiesce to equal probability, for even the neighbor possesses the right not to be harmed in life, whence it seems rather that evil greater than this ought to be forestalled. It is doubtful whether the same person will run if the lord abuses not in regard to justice, but in regard to other virtues? They deny it; yet they say that one who repays evil with evil does so more truly against charity, according to c. 2. 2. qu. 62. art. 5. ad 1, whose words we have reported n. 697, unless by not repaying one fears a greater inconvenience. (1) Art. 1897.

He will restore the deposit to that very person, or to whomsoever it was committed in his name, or who was sent for the reception thereof. Article 1941. He will restore the deposit in the place of the convent and at the expense of the depositor. Art. 1943.

Nowhere in the assigned place of the contract is there to be restored in the very place of the deposit. Art. 1944. The deposit to be returned to the depositor shall also be returned to the repeater in lieu of the day of restitution stipulated in the contract, unless an objection is raised that the thing will not be restored or moved from its place. (2) Art. 1947. The depositor will compensate for all expenses and damages which the custody of the deposited thing has caused. (3) Art. 1938.

It is not permissible to demand that the depositor demonstrate his own property. If however he comes to know that it is a stolen item, he will admonish the lord to recover it within a certain period of time; if he does not recover it, he can return the deposit to him from whom it was received. (4) Art. 1948. The depository may retain the thing deposited until that which is entirely due to him has not been fulfilled according to the reason of the deposit. Art. 1293.

Compensation of a debt cannot be made justly by retaining the thing deposited or by lending it, DUBIUM VI. What is a loan? How is a loan distinguished from permutation, pignorance, etc.? When must a loan be repaid if no previous term has been specified? Can a loan given to the Church, university, or minor be repeated? What if it is given for the use of children. R. Esp. It is a contract by which the constant dominion over a certain number, weight, or measure of some thing is transferred from the lender to the borrower, together with the obligation of restoring the same or an equivalent in species and quality. Properly speaking, a loan is almost exclusively in consumable things, among which is also money: which,

although it is neither consumed nor destroyed in itself, nevertheless diminishes for the borrower.

It is distinguished from permutation, in which a thing of another species is given back; likewise from pledge, mortgage, deposit, and loan, in which no transfer of dominion takes place, but only use. q. 3. p. 1. Whereupon you resolve: • 4. He who borrows is bound to warn about the vice of the thing; otherwise, damage will be incurred in conscience. • 2. Moreover, do not repeat the loan before the proper time, except in a case where such necessity is equally present. 758. — If the term for repayment has not yet elapsed, you should return the loan when you are summoned by the lender: understand that after some time, according to the prudent discretion of those competent, otherwise it would have been more burdensome to you than profitable.

Even if not requested, a loan should be returned to minors and those who have forgotten, out of reverence or because of distance: however, a lender who does not ask for his due, when he is able to do so, is considered to be yielding to delay. Thus in the third section, fifth chapter, eighth treatise, forty-fifth canon, second note. . with regard to the third point, fourth paragraph, sixth note. • 3. Moreover, he who is about to lend something gratuitously is bound to do so, since it lies within his power to give the same thing in the same quantity and at the same time. In vero mutuo aliquod accipere lucrum non licet, quia est usura, de qua dubium est in secunda secundae 756. — Sed hic notandum est quod mutuum praestitum Ecclesiae, causa piata, aut universitati non potest repeti nisi probetur in utilitatem illius conversum fuisse, l.

And the same is said about a loan given at a lesser amount, who otherwise would not be bound to return it even if increased, l. 3. cod. When from the fact of the tutor. If nevertheless the precatory gift with the consent of the chapter (and the same is said of the governor with the consent of the officials) receives a loan in the name of the Church, he himself always remains bound to discharge it; according to 739. — « 4. If anyone, being childless, gives away a great part of his goods in donations and afterwards begets children; because this tacit condition is included in the disposition of the law, namely that my freeborn children must be born to me.

And indeed, if it has been given to a stranger, it can be entirely revoked; but only as much can be revoked for some ascendant, such as a father or grandfather, or for the Church, or for pious causes, as is necessary that children may have legitimate rights. Although it is noted that this oath does not exclude the aforementioned tacit condition. Receive it, unless even this condition has been expressly excluded: for then he himself would

not be able to revoke it; nevertheless, his heirs could do so after the death of the father. Bon. d. 14.

But this revocation shall have effect, if children are born illegitimate who are later legitimated? See c. r. 63. and 64. Moreover, in a compensatory donation, the thing. 65. Wherein when Mol. and others six deny it, unless the cause exceed.

» (Nevertheless, the donor can retain the thing given until it is reclaimed by the donor itself, according to 2. cap. 18, n. 410, loc. cit., n. 410.) 740. — » 5. If the donation has been made in an unofficial manner (1), contrary to the duty of paternal piety, as when a father gives solely, so that the portion due to his son is deprived: then after the death of the father, the sons may revoke it. Even though the donation may have been confirmed by a vow. Megal. et alii 5. t. 6. r. 66. Nay, even while the father is alive; for although the legitimate portion is not due to be delivered before the death of the father, it is nevertheless due to be preserved.

Hence, if the father dissipates his goods, he can be compelled by the judgment of the son to preserve the legitimacy, so that the son may not lack sustenance after the death of the father. Thus probably against. Now, when a donation is to be rescinded entirely, see the Note, that if the donation is merely inofficious as regards its object, it is invalidated only so far as it causes an equal harm, wherein the son is defrauded; but if it is inofficious both as regards its object and with counsel, i.e., with intent to defraud the sons, then entirely is it invalidated when done gratuitously; whereas when done otherwise than gratuitously, or for pious causes, even only so far as the part of the son is concerned, it is invalidated. 2. cap. 18. dub. 14. n. 112. §. 4. n. 444. cum. 6. resp. 66. P. Concina tom. 7. pag. 441. n. 13.

Catastematic Law, book 6, chapter 29, note 4, according to Bartolo, law 1, chapter on inofficious donations, and from l. If all five and one. If the mother, ch. 7, same title. It must be noted that the donor is under no obligation to restore anything to the heirs before the judgment of the judge in such a case.

Thus, when. Then it must be noted according to 3. part. 4. question 42. number 18. number 39. etc., that parents, although they cannot diminish legitimate donations to their children through gifts, can nevertheless impose burdens through contracts and accept compensatory donations. But Cardenas with Lop. Vega, Cord. in Croix book 3, page 2, number 812, say that a father can appropriate his own goods for pious works, even to the prejudice of his legitimate children's lawful sustenance, provided only that

they not be deprived of what nature owes them by right, because civil law cannot prejudice pious causes. But to this opinion they contradict: both sentiments seem probable. « 6.

By the advent of the children, as Diana affirms more probabily [i.e., per supervenientiam liberorum, ut probabilius affirmat Diana], p. 8, tract. 6, rubr. 78, excepting from others four [contra quosdam]. If however the father does not revoke it, it cannot be revoked by the children subsequently born, unless for a reason of necessity, whether from a will or from intestate succession, ibid. ## DUBIUM IV. ### What is a donation causa mortis? And whether it can be revoked? And how, and to whom, can it be revoked? When is a donation causa mortis considered revoked? Can this donation be made in absentia? Who can make a donation causa mortis? Resp. 4.

Donatio mortis causa (4), quicumque sic donat, ut velit rem esse alterius primùm post suam mortem, ut si dicas, do tibi hoc post mortem meam, vel cum moriar, velquia timeo me nunc moriturum, revocari potest etiam in tribus casibus his: (in dubio donatio est censenda inter vivos, et irrevocabilis. Lugo, Prado, Sylv. de contract. c. 4. punct. 5. §. 5. n. 413.) « 4. If the donor repents, whether explicitly or implicitly, so that he gives that thing to another, « 2. If he gave with an intention of some imminent danger from which he feared death, thereby evading that danger, the gift is considered tacitly revoked; for example, if someone gives while in a serious illness, or during an impending battle.

Question 13, last paragraph, note 20. If the donee dies before the donor, ipso jure the gift is revoked: just as also happens in testaments and legacies. Afterwards is the promise, and the donation inter vivos, which passes to the heirs. That is to say, if the donor "promised himself not to revoke," it passes into a donation inter vivos.

See d. 14. n. 419. Mol. d. 286. et d. 288. Azor l. 44. c. 41. q. 4.

Bonaventurae l. c. (1) Simple donation for causa mortis is not expressly mentioned in the Codex civilis as a special mode for determining goods ratione mortis; if however it is admitted to be so stated, one must say that it would not have any force in civil law unless formulas constituted for wills are observed. . Lib. 4. Treatise 5. On the seventh precept of almsgiving. 742. — "Resp. 2. This donation should be made in the present.

Diana loc. cit. r. 66. et alii 5. It is invalid in absentia without a notice addressed to the decisor, or a letter: although it may be valid as a

testamentary disposition if witnesses were present. 743. — « I answer 3. » All can give by reason of death, and those alone who are able to make a will, except for a filio-familias, who, although he cannot contract a testament in any way, since this is of public law, yet he can still give by reason of death, which is of private law, if the father's express consent be present: otherwise, it holds that he cannot give him, not only from those in camp, but also from adventices, probable opinion gives. c. reg. 68. et 69. » (If indeed the son has by permission of the father an usufruct and administration of these things, as stated in point 5, section 5, number 146, even without the consent of his curator . c. res. 71. ex Mol. et alius.

Not however a usurer, unless he has first satisfied the usury or provided security; yet he may be admitted to pious causes. . r. 73. ex . Neither a congenital deaf person nor a congenital mute, unless circumstances subsequently intervene (or if he is merely deaf or mute), may according to some give during their lifetime. Azor, t. 6. r. 12. V. DOUBT.

What is a loan, a favor, and a deposit? 744. — "Resp." A commodatum is a contract by which some movable or immovable thing is gratuitously conceded for use alone, and this for a certain definite time either explicitly or implicitly determined: explicitly, as if you say, I lend you this book or house for one month; implicitly, as if you say, I lend you this book that you may write in it, because then the time is only implicitly determined which is necessary to write conveniently. — A precarium is a concession of things to be used by the petitioner until he repeats the gift either expressly or tacitly, as if one gives something to another or sells it. Chapter 3, Title 4, Canon 14. A precarium ceases through the death of the receiver, not through the death of the giver, unless it is revoked by the heirs.

L. When a precatory instrument ceases, it does so through the death of the recipient, not through the death of the donor, unless revoked by the heirs. See q. 9, art. 2, num. 9. · 746. — "Depositum est, quo aliquid traditur custodendum, ut" integrum reddatur." And commonly a movable thing, or one that moves itself, » such as clothing, a horse, etc. Therefore concerning this matters are resolved: 747. — « 1.

The bailee cannot demand repayment without injustice before the defined time. Because if nevertheless damage hangs over the commodator, he can repeat it, even though a similar damage might hang over the commodatary before the time of repetition due to matters prior to the loan, as is contained in decree 5, because, as Na- varr. says, in a loan is understood this tacit condition: unless there happens to be for the commodator something necessary, Expenses that are ordinary should be made by the commodatary, such as feeding the horse, etc., while extraordinary

expenses should be borne by the commodator, according to l. In matters concerning commodities, see Ff. de Commod. (1). 748. — « 3. If the depositary in good faith considers that the depositor will not be displeased if he makes use of the deposited thing, it will be permissible to make use of it; otherwise not. c. d. 2. (2). « 4.

If the deposited thing is a consumable in use, such as wheat or wine, Article 1880. The commodataria is bound to keep the thing as a good head of the family would do, preserving it and using it only for that purpose which nature and the contract intend. Art. 1881. If he shall use the thing for another purpose or for a longer duration; Art. 1882.

If in a fortuitous calamity she could have preserved her own property from damage and did not do so; Art. 1883. If the thing had been estimated before it was to be handed over, and no contrary stipulation had been made, it is likewise held bound for the repair of a loss by chance. Article 1884. If the thing, having been lent by force and without fault on the part of the borrower, suffers damage, the lord is diminished thereby.

Art. 1886. It cannot be repeated that expense was made for the sake of commodating something usefully, but to no avail. Art. 1888. He who hires out the thing either before a time defined, or, when no time is defined, before the intended use has been made thereof, cannot recover it.

Art. 1889. Si commodans ex casu improviso re sua vehementer eligit, eam ex sententia judicis commodatarius reddere tenetur. Art. 1890. The commodator is bound to restore all extraordinary, necessary, and urgent expenses which the commodatary has incurred in the matter of preserving the thing commodated. (2) 1930.

The depository in no way can use what is deposited without the expressed or presumed consent of the depositor - money which has been exposed to risk and consumed should have been handed over with a certain number, - weight, and measure; it does not seem that the depository would gravely sin even moderately by using such things when he knows himself to be possessed of goods of the same quality; if money were handed over in a sack, or enclosed in an arca, or sealed. Sylv. Azor, c. 25, d. 1 (4). Ita etiam, cit., n. 4, cum Mol. vers. It notes.

Then he notes further, that a depositary is bound to restore the value of the thing deposited if he uses it with bad faith; but if he uses it with good faith, he is bound to make restitution in what was done when he understands that it displeases the depositor. Thus 3. with Hurt. When

however the lord shall have granted the use of a consumable thing, even tacitly; then the deposit passes over to mutuum according to common opinion. At least when the depository uses the actual thing with the consent of the lord, 749. — "But if he to whom the thing has been lent, placed, deposited, or pledged negligently guards it in such a way that it perishes, then negligence is not a theological mortal sin; hence, as stated by Soto and Sa, it is probable that one is not bound to restitution in conscience."

» (As also held at point 2, § 4, n. 32, with Lugo, in book 6, chapter 9, n. 2, etc., see said note 554.) « However, others hold a different opinion, namely that restitution should be made by those who have contracted a legal guilt in the custody, even if it were slight; and especially when the deposit was made for the benefit of both parties, and if remuneration is received for the custody. « See d. 8. . 4. cap. 25, where it teaches that a depositary is bound only by dolus, or gross culpa, which would equate to dolus (1). It is said that juridical culpa lata, or crassa, occurs when one does or omits something that men of his profession would least likely do or omit in that matter; for example, if someone leaves a thing deposited with him in a public place, even inadvertently. Levis autem dicitur, cùm quis facit vel omittit, quod facerent vel omitterent homines suæ professionis diligentes, ut si quis depositum relinquit in Cap. 3. Of contracts.

Dub. 5. - in his own chamber, but neglects to close the door. It is called very slight, when one does or omits something that even the most diligent men would not do; for instance, if someone observed the door but neglected to test it with his hand whether it was properly closed. 750. — « 5. Tailors, dyers, and other craftsmen to whom things are entrusted for polishing or altering; likewise sailors and innkeepers, among whom things are deposited and kept, are held guilty through slight fault, because a deposit is also made for their own convenience; except Syllo. v. The sailor wishes for them to be held culpable even for the slightest fault: according to law 4, ff.

Deposits are considered to have been made with caution in order to avoid their frauds. Which is also thought by many to be probable in both courts, if anyone has entrusted them with something to be guarded: but if they have received it only before their own eyes, as for instance in a tavern, on a ship, etc., not even then are they to be held responsible. See Bonaventura - t. 8. r. 74. (1). 751. — “6.” If the depositary (who is also the commodator) doubts whether the deposited thing has perished through his own fault, he is not bound in conscience to restore it, lib. 2, d. 41, n. 18., because in doubt a crime is not presumed, ex l. Justly, for the partner.

See t. 9. r. 49. In the external forum, however, if the things deposited remain intact, presumption is made of fraud, unless the depositary proves that the deposit perished in an accident and could not have been preserved simultaneously with his goods (e.g., due to imminent fire): for then he would not be bound, because the presumption of fraud would cease. See concerning the assessment law, title 3, part 4, chapter 25, title 1, section 752 — Here it is distinguished as an exception to the general rule numbered 2. When things are lost in fire, shipwreck, etc., if a contract be made for the benefit of the giver, and the thing given is either less valuable or equally valuable with your own thing; then you may prefer your own thing and save it: but if the other person's thing is far more precious, in that case you can demand compensation for your lost thing.

If however the contract was for the advantage of the other party, then you must prefer the thing belonging to the lord, and cannot ask for compensation for your lost thing. Innkeepers will provide for goods which travelers have left with them. Article 1953. Therefore, they will compensate for the goods of travelers stolen or made worse by servants transported elsewhere or by different ones passed through.

Art. 1954. However, theft executed by means of greater force with arms or otherwise ought not to be imputed to them. Art. 1782. Those who engage in conveyance by land or sea are held to obligations for things deposited with them in the same manner as innkeepers.

Art. 1783. They will provide for things to be transported, as soon as they have been committed to them at the door or at the station of merchandise (gall. estrepod). Art. 1784. The loss and corruption of goods entrusted to them will be imputed to them, unless a fortuitous case or a stronger force is proven in the cause.

Art. 1789. Si artifices in rem alienam conficiendam nihil nisi operam contulerunt, rei jacturâ factâ ad compensationem non tenentur, nisi culpa intercessit. Digitized by Google « 7. If to the lord who demands back the deposited thing, he has remitted it through a man who was reputed as faithless, and has kept it for himself or lost it, Molina says that the lord's loss is declared, as quoted by Escobar.

See Tryll. l. c. (1). He who deposits something that is not consumable for use may receive something in exchange for its use from the depositor; because it is estimable by price (although in this case it be not a contract of deposit but one of loan and delivery). Otherwise, if it be consumable for use: then indeed the deposit, as soon as the depository begins to use it, assumes the nature of many, from which (severed from the reason of profit

ceasing, etc.) nothing may be received, as is seen in the doubt following and in Bon. d. 3. qu. 43., p. 3, c. (2). 753. — It must be noted here that the depository can refuse the deposit to the lord in four cases: 4. If by sentence all the goods of the depositor are adjudged. 2. If he understands certainly that a thing is stolen (3). 3.

If he himself has a certain cause for compensation (5). 5. If prudently and certainly he would judge that one would abuse what was deposited against justice, let him consider the sword for killing; because then he would sin by returning the sword, contrary to charity, as in 4. art. 5. num. 1. But rather, 2. cap. 16. d. 4. . 2. and they think truly, that he would have sinned even against justice: because he would very nearly have cooperated in homicide. See the aforementioned number 697.

He nevertheless certainly fears; for in doubt, or where there is equal probability regarding damage, the sword should be returned, unless the master is mad, so he says. But I do not acquiesce in equal probability, for even the neighbor possesses the right not to be harmed in his life; hence it seems rather that evil greater than this should be more carefully avoided. It is doubtful whether the same person will run if the lord abuses not in regard to justice, but in regard to other virtues? They deny it; yet still they call him one who sins in order to bring about greater sin against charity, as stated by St. Thomas Aquinas, 2nd part, second section, question 62, article 5, answer 1, where we have reported his words, n. 697. Unless he fears a greater inconvenience from not retaliating. (1) Art. 1987.

He restores the deposit to that one alone, or from whose custody it was committed, or to whom it was sent for its restoration. Article 1942. He will restore the deposit in the place of the convent and at the expense of the depositor. Art. 1943.

Nowhere in the assigned place of the contract is there to be restored in the very place of the deposit. Art. 1944. The deposit to be returned to the depositor is also to be returned even upon repetition by the same person, as if the days for restitution were stipulated in the contract, unless the law prohibits the restoration or movement from its place. (3) Art. 1947. The depositor will be impelled to compensate for all damages which the custody of the deposited thing has occasioned. (8) Art. 1938.

It is not permissible to demand that the depositor demonstrate that the thing deposited is his own property. If however he should recognize that it was stolen, the master may within a certain time limit demand its return; if he does not demand it, the depositor can restore to him what was received by deposit. (4) Art. 1948. The depository may retain the thing

deposited until that which is entirely due to him according to the reason of the deposit has not been given to him. Art. 1933.

Compensation of debts legally cannot be made through the retention of deposited things or conveniences. DUBIUM VI. What is a loan? How is a loan distinguished from permutation, pignorance, and deposit? When should a loan be repaid if no specified term is given? Can a loan given to the Church, university, or minor be repeated? What if it is given to a daughter-in-law? — Resp. It is a contract by which the constant dominion over the number, weight, or measure of some thing is transferred from the lender to the borrower, together with the obligation of restoring the same or an equivalent in kind and quality.

Properly speaking, a loan is generally found in consumable things by number, weight, or measure, among which is also money: which, although it is neither consumed nor perishes in itself, nevertheless diminishes for the borrower. It is distinguished from permutation, which involves the return of a thing of another species; likewise from pledge, hypotheca, deposit, and loan, in which no transfer of dominion takes place, but merely use. q. 3. p. 4. Wherefore thou hast resolved: • 4. He who borrows is bound to warn about the vice of the thing; otherwise, damage will be incurred in conscience.

Moreover, it is not to be repeated before the proper time, unless there arises an equal necessity. 755. — If no term has been prefixed for restitution, you should return the loan when the lender demands it; understand that after some time a competent prudent man would judge otherwise, for otherwise the loan would more properly have been refused than granted. Even to tender years it is due to render and what has not been asked, if it is not asked because of forgetfulness, reverence, or distance: but the lender, although not asking for it, is deemed to yield to delay when he can easily do otherwise. Thus in the third section, fifth chapter, eighth treatise, forty-fifth canon, second note. . with regard to the third proposition, fourth part, note four. • 3. Moreover, he is bound to repay that which was fortuitously lent to him, since it lies within his power to do so, and to render the same thing in the same quantity at the proper time. • 4.

In vero mutuo aliquod accipere lucrum non licet, quia est usura, de qua dubium est in secunda secundae 756. — Sed hic notandum est quod mutuum praestitum Ecclesiae, causa piata, aut universitati non potest repeti, nisi probetur in utilitatem illius conversum fuisse, l. And the same is said about a loan given at a lesser rate, who otherwise is not bound to return it even if increased, when made greater, 16. 3. cod. When from the

fact of the tutor. If however a loan is received with the consent of the chapter (and this is also said of a governor with the consent of the officials) under the name of the Church, itself it always bound to repay; although prelates can rightly alienate movable goods of the Church with due regard to the chapter. To be noted further that a loan given to the filiis fam. ut sic putatis, and to those lacking in goods among the castrensibus, without at least tacit consent of the parents, is not to be repaid by them later, even in external forum, according to the Macedonian senatusconsult, l. 14. ff. tit. 6. leg. 1.

By what privilege the sons can avail themselves thereof, even though they renounce it. n. 8. . n. 7. cum If a loan exists in other things than in money, concerning which the law speaks. It is excluded 2. If the son has sworn to pay: although after payment he may have an action for repayment; nevertheless he cannot procure relaxation of the oath for himself, . as stated. DD. n. 8.

It is excused 3. If a loan has been given with the knowledge and without contradiction of the father, or if it has been converted to the benefit of the father or children in things which the father was bound to provide them: likewise, whether the children are free from the repayment of the loan in the first mentioned case, not only in external forum but also in internal? They deny and rebel because the civil law does not abolish the natural obligation. They rather affirm with a sufficiently probable opinion, namely numbers 8 and . cit. n. 40., because the law properly so-called, when acting for just cause, can take away the natural obligation, and thus it is judged to have acted in this case for the purpose of preventing harm to the parents and avoiding the injustice and usury of the creditors: but it does not seem that the supreme human power, by reason of its high dominion, cannot properly transfer the dominion over things from one person to another for the common good, as is evident in the law of prescription.

See what is said in number 547. Doubt VII. What is usury? 758. When is partnership in usury considered? 759. Whether usury is evil by the law of nature? 760. Whether the borrower can demand something, if he is obligated to await payment for a long time? 761.

On mental usury. Qu. I. When from it there arises an obligation of restoration?

Qu. II. Whether the lender can retain what is in doubt, or whether it is given gratuitously? 762. Whether it is licit to give a loan with the hope of gain? 763.

Whether he who lends may retain that which he has lent out of fear, lest a future loan be denied him? 764. Can an antidualistic obligation be drawn into a contract? 765. Can something be demanded on account of a risk to property? What about the mountains of piety?

Is it licit to possess a conventional contract? 767. Whether a penalty ought to be imposed before judgment? 768. Whether and when something can be demanded on account of damage incurred, or on account of lost profit? What is required for conditions to be demanded in order to claim an interest?

In contracts it should be advised to the lender concerning damage arising, or some other just title? Can the lender demand such interest if he himself offers to lend? Can it be allowed that one who is about to make a contract stipulate from the beginning for a certain sum of money to be paid as damage, and an uncertain loss or profit? Can you demand a lost profit if you substitute another sum of money for capital not intended for the transaction? What if you say: I would have made the deal, had there not been those who were asking for excessive interest? What if there was a just title to demand something, but in good faith the lender entered into a usurious contract with the borrower? What kind of agreements are permissible in the exchange of loans? Is it illicit to enter into a contract according to the mandate of the law? Should the fruits of a pledge be restored? What if a pledge were given for a dowry? Does a lenient contract allow something to be returned as debt but not according to justice? An ut de sitatur ab injuria? An caleat pactum, ut injuria condonetur? An pactum, ut conferatur officium? An pactum, ut praestentur debita ex gratitudine? An pactum remutuandi? An pactum, ut res in eadem specie reddatur? An usurarius acquirat dominium lucri usurarii? Quid de fructibus rei consumptibilis? Ad quid leneatur praebens consilium, aut dans pecuniam pro multo usurario? An peccet deponens pecuniam apud absurrum ad usuras? An principes, etc., cooperantes, ut solvantur usuras, leneantur ad restitutionem- nem? An liceat creditori mutuantis exigere usuras? An peccent famuli cooperantes dominis usurariis? Quomodo haeredes usurarii leneantur ad restitutionem?

Is it permissible to petition an usurer for a loan: See remissively ad lib. 3. n. 47. v. Secondly, and n. 77. v. 4. Licitum. 791 See other cases among Busemb. 792 What obligation, and prohibition against usurers? 758. — « Resp. It is a profit immediately deriving from a loan: namely, when he who lends exceeds the rate of interest, that is, the principal sum, and thereby earns something estimable in monetary value, such a profit being precisely intended by reason of the loan.

That which is plainly unjust and a grave sin against both human and divine law; for when he who lends acquires profit from a thing that no longer belongs entirely to him: because the thing lent has already passed into the dominion of the lender, as is evident from the definition. And the general rule is: Every pact or burden, or addition of weight to a loan beyond what is proper and intrinsic to it, makes the contract usurious, Bonac. d. 3. q. 3. p. 3. Cardinal.

Lugo, etc., 759. — It is certain that usury is also illicit according to natural law; and it cannot be demanded from a thing lent anything beyond its value, as commonly say the theologians and jurists with St. Thomas, II. II. q. 78. art. 1. c. Super eod. de usuris (1). The reason is because, as St. Thomas teaches in I. c., although in a thing which does not consume its use, such as a house or a horse, the use can be distinguished from the thing itself: yet in a thing consumable by use, such as wine, wheat, money, but not tismis (a term for certain goods), this is to be understood at this point. Decisions of the Apostolic See have issued on this matter. They indeed leave unchanged the doctrine of the Church and especially that of Benedict XIV regarding the altered matter of usury, or at least they assert some title of an external loan not to be disturbed as non-quietae, who claim five per cent profit beyond the measure of the civil law's stipulation, until the Holy See issues its definitive sentence, to which they are ready to subject themselves. Three decisions are adduced, of which the first is brought forward at the instance of the Most Illustrious Lord Gousset, Archbishop of Rouen, and two subsequent ones at the instance of Lord Desaevi, ## I. The orator expounds upon the sacrament of Penance. 1st: Whether that confessor who has set aside absolution, deserves to be able to receive payment for his assistance out of fear from the rich or merchants, beyond what is due according to the mere civil law, five pounds for each hundred, even from those who possess no other title than the civil law for a loan outside? 2nd: Whether the confessor sins by remitting in good faith to a penitent who demands profit out of fear, according to the statute of the civil law, without an extrinsic internal cause, or danger arising, or extraordinary peril title?

The Sacred Penitentiary, with careful and mature deliberation on doubtful matters, responded: "Regarding the first point: The confessor, in a doubt concerning whom, is not to be troubled until 'the Holy See issues its definitive decision,' to which sin one submits oneself, and the same does not obstruct his absolution in the sacrament of penance. To the second: As foreseen in the aforementioned, provided that penitents are ready to abide by the mandates of the Holy See. Given Rome at the Sacred Penitentiary on the 16th day of September, 1380. R. CARD. FROM GREGORY M. P. Fa.

Faicca, S. P. Secretary. ## II. To the sacrament of Penance, the speaker expounds: "When sacred doubts regarding the matter of usury are proposed to the Penance, it always refers them to the doctrine of Benedict XIV, which is indeed both clear and perspicuous for those who sincerely wish to examine it." However, there are certain presbyters who contend that it is licit to receive five per cent interest merely by virtue of the principle law, without any title whatsoever, nor as a consequence of any loss incurred or cessation of profit; they say: what is the legitimate title of the principle law which transfers the dominion of the creditor, just as in prescription it transfers dominion, and thus they utterly nullify both divine law and ecclesiastical law which prohibit usury.

When matters stand thus, the orator, deeming it in no way permissible to depart from the doctrine of Benedict XIV, denies the sacramental abolition to those presbyters who contend that the law of the prince be a sufficient title for receiving something beyond the limit, without any title or of cessation of gain, or of emergent damage. Wherefore the speaker humbly supplicates that » the doubtful matters be resolved: » 1o Whether it is permissible in conscience to deny the abstention to presbyters who have been provided? » 2o Utrum debet? The Sacred Penitentiary, having diligently and carefully examined the doubtful precepts, responds that the presbyters concerning whom it is being discussed should not be inquired about until the Holy See issues its definitive decision, to which they are prepared to submit themselves; therefore, there should be no obstacle to their absolution in the sacrament of penance.

Given Rome on the sacred day of Penance on September 16, 1880. ## R. CARD. DE GREGORIO, M. Father ## F. Faicca, S. P. Secretary.

Let us consider the distinction of use from dominium, since use is the consumption of the thing itself, and thus in maxuo the nature of dominium is transferred to the user: if therefore something were demanded for the use of a consumable thing, it would be unjustly demanded, says St. Thomas and all, because it would be demanded for a thing which ## II. To the Sacred College of Cardinals. Letters explanatory are created. « The response of the Sacred Pontifical Office to the aforesaid prayer, addressed on September 16 at 1800 hours, directs that priests who dispense the law of the prince as being sufficient and legitimate title for perceiving something beyond the limit in loan, without any other title commonly admitted by theology, until the Holy See issues its definitive decision, should be ready to submit themselves thereto; and I humbly and willingly conform myself to this response. » However, having been approved by sacred Pontifical responses proven, and consultations ratified by authors,

and attentive to the doctrine of nearly all seminaries in Gaul, especially those which direct the presbyters of the Congregation of Saint Sulpice; the opinion which rejects the title of civil law as insufficient seems much more probable, safer, and alone to be held in practice until the Holy See issues a definitive decision. Therefore, those who are constituted by me to seek the remission of sins committed by priests through mutual consent do not have the faith to demand such remission from anyone who has no title commonly admitted by theology other than the title of civil law; and I respond that they cannot require said document, and I deny them sacramental absolution in their request.

I absolutely deny absolution to those who, having received such a title, that is, by force alone of the title of law, refuse to restore it. » It is asked: First, do I have a greater and more severe regard for this city in dealing with such faithful ones? etc. Second, what reason for acting in practice should be feared towards the faithful until the Holy See has issued its definitive judgment? » Lugduni, 24 septembris, 1831. The Sacred Pontifical Authority, having considered the doubts proposed by the interlocutor, responds: "Regarding the first point, affirmatively, because it is clear from the response given by the Sacred Authority itself that faithfuls who conduct themselves in good faith should not be disturbed." » Ad secundum: Provisam in primo, unde orator priori sacra Pontentiaris responso, sub die 16 sept. 1836, esse conformare studet.

Given in Rome, at the Sacred Congregation, on the eleventh day of November, 1831. ## A. F. OF THE RIGHTS, S. P. REX. F.

FAICCIA, S. P. SECRETARY. The decisions of the Holy See do not wish to define whether it is permissible to accept five percent profit according to the title derived from the principle ex lege, even if the question regarding this matter has been brought up by the same title; they disapprove of teaching in sermons that it is licit to receive profit from a loan based on civil law, with reservations and conditions imposed by the Sacred Congregation, yet not mere tolerance but positive permission should be said to be given, as Saint Alphonsus himself approves in this his treatise on loans, n. 765, in a similar case regarding the change of Chinamium. Nay, it should not cause unease if sacramental absolution is denied and an obligation of restitution imposed upon those who receive 1° doubtful or ill-faith gains, provided they are ready to abide by the mandates of the Most Reverend Lord Galvano, Bishop of Nicaea: "Whether penitents who have received moderate gain under the title of law from a doubtful or ill-faith loan shall be sacramentally absolved without any obligation of restitution, provided that they sincerely grieve for the sin committed through double or ill-faith, and are ready to stand by the mandates of Holy See." » The

response was given on the seventeenth day.

January 1838: In the general congregation of the holy Roman and universal Inquisition held in the convent of Saint Mary above Minerva, it is not present. Some Neophyte, however, in a recently published work has labored to prove that money is not sterile and unfruitful, as other things are which are consumed by use; since, he asserts, many gains arise from money in common trade among men. Hence it follows, after having removed just titles of peril, damage, etc., which we shall speak of below, that something can licitly be demanded in excess of the due from a loan of money; provided that the profit be moderate, and that the lender be rich, and that he employ that money in augmenting his goods. But this new opinion has been forbidden by our present Supreme Pontiff Benedict XIV in the Encyclical Letter issued in the year 4745, which begins: "It has scarcely arrived and will be extended to the end of the Work."

The certain reason is because the profit which is received from money arises entirely from human industry, and not from the money itself, for since it is utterly sterile, it cannot bear fruit; but it arises solely from the mere industry of men: nor can I demand anything beyond my due from him because my money will benefit another by his industry; similarly as if I were to sell an item which would be very useful to the buyer on account of his own industry, I cannot therefore receive anything beyond its just value. The reason is self-evident, and does not require any other declaration. As for that which is added, namely, that God allowed the Jews to feast with foreigners according to Leviticus 22:42, the response is given in Chapter 3, Number 27, where it is stated that then God did not permit usurious practices, but rather conceded this manner of accepting goods from the Gentiles, which the Lord had freely given to the Jews. Read the Council of Pavia, which in a special volume thoroughly and learnedly refuted this false opinion.

These however condemn three notable propositions. First from Innocent. XI. n. 44. he said: When counted money is more precious than uncounted, and no one makes present money greater than future money, a creditor can demand something beyond the measure from the borrower, and this can be excused on the title of usury. Second from the same.

Usury is not when something beyond the due is demanded as a debt of benevolence and gratitude, but only if it is demanded as a debt of justice. Third from Alexander. VII. n. 42. It is licit for the borrower to demand something beyond the stipulated amount, if he has obligated himself to return the loan only up to a certain time. 760. — But it is questioned whether, under the obligation not to demand repayment of the loan again

after a long period of time, which he has undertaken by lending, he can demand something beyond the stipulated amount even if no inconvenience arises from the delay?

There are three opinions. To the Most Eminent and Most Reverend Lords, DD. Most Sacred and Reverend Lords and Gentlemen Cardinals against heretical perversity general inquisitors proposed the aforementioned doubt to: Eminentissimis and Reverendissimis DD., S. R. E. said that the affirmation is made provided they are ready to abide by the mandates of Holy See.

ARGENTINE AIRCRAFT, S. Rom. Notary of the Universal Inquisition. Edition. Chapter 3. Of contracts.

Dubium 7. The first common opinion denies this, and those hold it according to 2. c. 20. n. 127. prop. 42. n. 40. 3. tr. 4. c. 46. n. 7. Lugo d. 25. n. 17. qui vocant contrariam falsissimam, et communiter ab aliis reprobaturam. Reason, because such an obligation is intrinsically annexed to the mutual agreement, inasmuch as it cannot be immediately repaid; just as nothing can be demanded from that which is expected to be resolved after some time, so too not for such a period of time; otherwise, they say, usury could easily be palliated many times over by demanding it not for the sake of the mutual agreement, but for the obligation of expecting repayment.

And to this seems to favor the condemnation secondarily and specifically. The second opinion states that although in a loan there is an obligation to expect repayment over some time; yet when the obligation is one of not repeating it, except after much time—such as three years—then, since such obligation is not intrinsically annexed to the loan, something can lawfully be demanded. Medina de restitut. qu. 32. §. Inde, Serra, n. 25. ibidem probabilem putat puerpensem ac Bassæus, atque non improbabilem putat Sporer de 7. præc. c. 4. n. 74. And this opinion does not seem wanting in probability; for if it is licit to demand something from him who is obligated to lend within a short time, as teach DD. communis with n. 5, why then cannot he who is obligated not to repeat his own thing, unless after a long time, likewise lawfully demand something? See further infra the extended discussion.

The third opinion is not much less similar to this second one than are held by points 3, n. 26. with Bann. Prado, Aragonensis et Carthaginensis, dicit quod licet adhaerendo primae sententiae, exigere aliquantulum precisè pro tempore sit usura; tamen, cum moraliter impossibile sit quod per multum temporis expectando mutuans non patiatur aliquod periculum, damnum

vel incommodum, aut saltem non impediatur ab exercendo aliquem actum liberalitatis, aut alterius decentis operationis, ideo potest aliquid ultra sortem recipere et pacisci. But you may say I. The obligation to expect a repayment over some time is inherent in every loan; hence, just as in a loan for 45 days there is an obligation not to demand repayment within 45 days, so too in a loan for three years there is an obligation not to demand repayment during the three years; because that obligation to expect repayment over three years is intrinsic to such a loan, otherwise the lender would be selling his own commodity: nor can such an obligation to expect repayment for such a time be estimated as having a price, since it does not proceed from justice, but from the same liberality from which proceeds the benefit of lending.

But it may be replied: Although an intrinsic obligation to expect for some ordinary time is inherent in every loan, nevertheless a particular loan, with a pact to expect for extraordinary time, is not intrinsic but entirely extrinsic such an obligation; and hence that proceeds from justice, not from liberality, by reason of the pact which obligates according to justice to perform for so much time. Hence, if the lender receives something for such an obligation, he receives it rightly, not on account of the commodity which he is deprived of, but on account of the burden imposed upon him by the contract, which burden is indeed comparable to a price, as stated in Lugo loc. cit. n. 24. and elsewhere. He says II. Obstructs the third proposition, which was recently rebuffed above, from which it seems altogether forbidden to demand anything for an obligation expected until a certain time.

But it is replied: The said proposition was justly condemned, because by those words it included in a过于频繁的换行打断了连续的文本阅读体验，且对于理解整体句子结构并无帮助。请予以纠正。 <|im_start|>⚗ And hereby incidentally noted, certain individuals are led to disapprove all opinions which have any resemblance to the condemned propositions, thinking ineptly that they should be so generally proscribed that no exception or just interpretation would be tolerated. That is truly contrary to the nature of damned propositions; for according to the unanimous consent of all DD., opinions are not to be rejected with open eyes from the class, unless they are expressly or virtually contained in the proscribed ones.

Castrum, regulariter loquendo, propositiones damnatae intelligendae sunt uti jacent et in sensu rigoroso, atque ab auctoribus illarum intento. Besides which, certain opinions (as may be said of that one with which we are dealing) have been condemned because they spoke too generally, and therefore they are not to be extended to all particular cases, which are

distinguished by some accidental circumstance. 761. — « 4. "Peccat graviter ex genere suo exercens talem usuram, etsi sit mentalis tantum, sine externo pacto." It is said to be usura mentalis when one intends to receive something beyond the stipulated amount in a loan, even though this does not express an external pact: just as real usura and exterior usura are said when one expresses that intention through some pact.

That which sometimes is implicitly included in some contract and is called palliated usury, since the parties pretend another contract of sale, hire, etc., in which nevertheless truly usurious gain does intervene. See examples in Tolet. lib. 5. cap. 81. Hence it is not a question of mental usury, which exists solely in the mind without any loan being given; for this does not obligate to any restitution: but it is a question of mental usury, which is connected with the loan, yet without an express or tacit agreement for making some profit above the amount lent, for distinction of real usury, which arises from the agreement. It is divided into four parts.

When from this mental usury an obligation to restitution arises? We say 4. When mental usury is on the part of both parties, so that the lender receives profit as a reward for the loan, and the borrower repays such profit likewise, then certainly profit must be restored. We say 2.

When usury is on the part of the mere lender alone, who receives profit as the price of the loan, and the borrower likewise pays such a thing, then certainly the profit must be restored. On contracts. Dub. 7. Then, when the borrower receives goods in good faith as if they were freely given, he is not bound to restore them from unjust acquisition, but only from what has been received, since it is not known that the loan was made without consideration. We say 3.

When against usury there is only the part of the mutuarius concerned, namely that he has given gratis what was lent, and the mutuans has received it as a price; then if one knows that he liberally gave it as a gift, he can retain it. It is inquired about II. In doubt whether he has given something beyond the limit gratis or as a price of the loan, whether the borrower can retain that? It is certain that a legitimate mutuant can lawfully receive liberal gifts from the mutuator, as all teach with St. Thomas 2-2, Question 78, art. 2, ad 3.

If however the doubt is whether the mutuarius has given gratis beyond the limit, or not? they respond: 2. c. 20. dub. 6. n. 45. et punct. 4. n. 31. that if the mutuans received a gift in good faith, he may retain it upon supervening doubt; but otherwise if he received it with doubt. But what if he has received it with a positive doubt, or with probabilities favoring the

genuine donation? Sporer admits in 7th precept, n. 80, that it is possible to retain something on the basis of a probable opinion; but commonly and rightly they deny this on page 559, n. 3, cap. 3, art. 5, concl. 2, in fine v. When in doubt, and as Soto, and also Bonaventure state, because in a case of doubt the regular presumption is that it was coerced, since difficulty compels men to freely give what they possess, as Sporer himself admits in note 77.

The other side in this doubt should be credited to that party for which there is a stronger presumption; hence Sporer, in the cited place, doubts whether it must morally be presumed to have given a gift freely and regularly, if he is not poor, or greedy, or has not been moved by fear, trouble, or request of the one asking. The same they also say, n. 43, with St. Anthony, if he shall have asserted through writing that he has freely given away, unless it be proven that in this writing there is fraud regarding usury. The opposite is presumed when, according to number 42, before making a donation, something is signified as owing to oneself, or if the mutuarius is poor, or not accustomed to give, or if he pays before the repayment of the loan: because then it is easily presumed to give so as not quickly to be compelled to repay the loan. They reasonably consider the same [to be] . n. 44. against the Decretals: if one has received a loan for necessary uses, because such necessity removes, or at least weakens, the presumption that he has given it entirely freely. - 2.

Usury is not present if the lender intends nothing as a price, but merely hopes for something from gratitude, and with that intention something is given to him; although he may intend that as the principal end. p. 305. n. 5. Lugod. 25. 762. — It is asked I. Is it permissible to lend with the expectation of tears? Saint Thomas 2. 2. q. 78. art. 2. ad 3. thus distinguishes: If someone regards or demands repayment of a reward from service, or from speech, it is as if he expected or demanded a gift from the hand... But if a gift from service or speech is not offered or demanded as if from an obligation of thing, but rather out of benevolence, what is under estimation of money does not fall, although this may be received and demanded and expected.

From hence they infer 4. Cajet. . and Villal. in the notes at point 4, number 34, in the forum of conscience, there is no sign of mental usury, which one would not lend if he believed that no recompense would be made for what was lent. They infer 2. the same Cajet. Prado ibid., cum tamen bene advertunt cum Lugo et alii hoc non carere vehementi suspicione usurae, juxta dicta de simonia n. 54.

Whereby rightly they say. and. 42. Innoc. XI. n. 45. Thus, those who lend

in this manner are ordinarily to be considered usurers. They feel, however, in ibid. n. 33. and n. 37., with P.. But I think more correctly with P. Concina that this is altogether illicit, according to the text of Lucca c. 6. y. 35., where it is commanded: "Give a loan, expecting nothing in return."

If this text is not explained thereby, I do not know in what other principal case it can be explained. The reason for our opinion is this: since it is not permissible to give a loan primarily in order to gain profit from what is lent, neither is it permissible to lend primarily in hope of profit. This is entirely confirmed by the example of simony, which proceeds pari passu with usury: concerning simony we have already approved n. 54.v. Moreover, and n. 54., si quis det temporale solo intuitu obtinendae rei spiritualis, tunc censetur habere intentionem saltem virtualiter simoniacam, ut patet ex propos. damnata 46.

Innoc. XI. quae dicebat non esse simoniam dare temporale pro re spirituali, etiamsi temporale sit principale motivum dandi spirituale. The same must be said about mutual obligations, for when a loan is given primarily out of hope of gain, then that hoped-for gain, since it is the principal motive for lending, is virtually converted into the price of the loan. And this is clearly gathered from chapter "Consuluit de usuris," where it is thus stated: Thy devotion has consulted us, whether that usurer ought to be judged who, not intending otherwise in lending money on interest, trusted in that purpose, so that although all agreement ceases, yet by chance he might receive more.

Indeed, because what is to be held in these cases is manifestly known from the Gospel of Luke, in which it is said: Give alms expecting nothing in return; such men, by reason of the intention of lucre they have, since all usury is prohibited by law, are to be judged as having acted ill, and those things thus received are effectively to be restored in the judgment of souls. Hence wisely spoke Saint Raymond: He who lends under such a hope, whatever he afterwards receives beyond the sort, even if given freely, is usury. Treatise on Usury § 3. But indeed, one hardly sins at all in changing a loan to obtain another’s goodwill, even though this goodwill may be the principal motive for lending, because gratuitous benefit of itself pertains to the obtaining of mutual goodwill.

But I add this: even if a secondary hope for some profit is entertained, such that profit should be the urging cause to lend (yet not if, lacking this hope, the loan would not be given, because then at least it is presumed that the mind of the usurer is corrupted); thus from 2. q. 78. art. 2., where he says: If (the lender) receives something, not as one demanding, nor as bound by any implicit or explicit obligation, but merely as a gratuitous gift, he does

not sin; because even before lending the money, you lawfully could have received some gift gratis, and this does not make him worse off. Verily however, the recompense of those things which are not measured by money, although one may demand them in return for a loan, it is supposed to be out of benevolence and love for him to whom the loan is made, or something of this kind. And in article 4 it is said that such a gift may still be hoped for in a loan; namely (as we have said), this hope must not be the final cause of the loan; for although speculatively speaking, it differs to hope profit from benevolence and to hope from justice, yet in practice these are easily confused. 763. — Question II. Whether the lender can retain what the borrower gave not out of mere gratitude, but out of fear that another loan will not be given to him in the future, or lest he be esteemed ungrateful?

They deny [or: Cajet denies]. Molina, n. 10. who considers the opposite opinion to be probable in speculation, not in practice. But affirming . 4. c. 46. n. 1. Lugo, de contract. c. 3. punct. 4. n. 35. quia ex S. Th. et communi, requiritur ad usuram ut detur ex vi pacti sive ut debitum ex justitia; dari autem ex tali timore non efficit ut detur in pretium: lex enim mutui non prohibet ut alter nolitans apparere; etsi illa alioquin sit involuntaria, nequaquam tamen tale involuntarium illam irritat cum non proveniat ab extrinseco cogente sed ab intrinseca necessitate vel voluntate ipsius mutuatarii.

Thus . n. 36. with Serra, and Soto, who observe that it must always be discerned whether the borrower receives on the basis of friendship, or on the basis of a loan. 764. — « 3. That is, if nevertheless he should understand that something has been given to him not freely, as he thought, but as a debt on the basis of a loan, he would be bound to restore it, to the extent that he became richer thereby, as Sa states. Usury, Card. Lugo, » d. 25. sect. 3.

Observe aquí la proposición 42, condenada por Inocencio. XI. qua dicebat: Uurra non est, dum aliquid ultra sortem exigitur ex benevolentia et gratitudine debitum, sed solum si exigitur tanquam ex justitia debitum. It is correctly noted that proposition number 6 states that the damnation of debt from gratitude falls within those words, for a mutuarius is not bound to satisfy the obligation of gratitude with his goods, since he can fulfill it by praising the lender, praying for him, etc. But whether the obligation of gratitude or antidotal can ever be reduced to a pact? Absolutely negated, as clearly stated in the aforementioned proposition, for that which is deduced into a pact is already called a debt.

See the aforementioned similar note number 53, 1. "4." It is not usury to

lend on interest for the sake of gaining another's friendship, nor thereafter to hope for a favor; because friendship is not valued by price, Card. Lugo ibidem. « 5. However, a pact for obtaining from a moneylender (or through his agency) any office is illicit and usurious.

Thus with the common: "C. Lugo," (anno Vives in prop. 42. Innoc. XI. n. 15. et . tr. et c. p. 8. §. 4. n. 58. communiter) « contra Navarram. Even though Salas excuses those who lend something on a contract, such that some benefit be forthwith provided out of gratitude.

See » . 7. c. 19. dub. 7. » (Indeed, he is excused who lends with a pact such that something beneficial be returned immediately: otherwise, for the future. See what is said about Simon, n. 57, and what should be said, n. 784, according to St. Thomas.) • 6. A pact, by which the borrower receives a ecclesiastical benefit, » is usury (and simony), because he is compelled to bear a new burden. • 7.

It is not usury when one, unable to recover his own property, lends it, "so that his property may be returned to him or so that harm does not come to him: because these things ought already to be owed by law, and thus he does not make a profit nor impose a new obligation. T. 3. n. 45. ex qua dicuntur etiam de mutua.) 765. — « 8. It is not usury to demand something on account of a risk of recovery, difficulties, or expenses which will be, or may be moved in the matter of recovery, provided that the price can be estimated for which one exposes oneself to such a risk and difficulty. Conclusion 3. Question 3. Article 5. However, it is necessary that this risk, etc., be deduced into an express or tacit pact, teaches . 3. t. 4. c. 46. n. 9. ex Medis.

Val. Mol. Lugo number 80. And thus lawful are the Montes Pietatis, as they are called, namely certain treasuries which are deposited in refuge for the poor by the republic or prince, so that from thence gratuitous loans may be made to the poor, albeit with this provision, that they repay a small amount for the expenses incurred in the ministers and for the conservation of such treasuries.

See Chapter 5, Article 48, Section 2. Chapter 20. Bon. l. c. p. 43. A great question is debated: whether it is licit to demand something above the stake on account of the risk of losing one's chance at the prize?

Chap. 3. On contracts. Doubt 7. The first opinion denies it, and those who hold this view are numbered as 84.

Sot. l. 6. q. 4. a. 1. praeceptum cap. 11. Nat. 3. a. 5. reg. 3. Gen. Tr. 4. c. 7. q. 3. Reasons for this judgment we shall set forth below in the objections to the second judgment which we are about to follow.

Therefore, the second opinion will be confirmed and considered sufficiently common, as they hold above in 2. c. 20. dub. 43. n. 141. Sylvius in the second part, second question, seventy-seventh article, fourth quaternio. Sylvester. o. Usury, cap. 3. art. 3. sect. 1. conc. 4.

Wigandt translated chapter 9, example 8, response 9, section 5, title concerning usury. Petrocerensis t. 2. p. 387. Cabass. The.

J. l. 6. c. 8. n. 2. Lugo on the 25th, notes 77 and 79, point 10, note 88, with Mol. Good. Sal.: Provided that the danger be true and extraordinary, not however common, of losing one's fortune, or of not regaining it without great expenses and labors, namely if a loan is given to a man of doubtful faith, or to a poor person (understand: if he himself does not give the loan, except what you rashly venture from that precept to lend, for alleviating his present need). Provided that 2. you do not refuse assurance of the fortune if it be offered to you by way of pledge or suretyship, and you do not force the borrower to undertake such a danger, as correctly they note in punct. 9 n. 85 at the end.

Otherwise, you can justly demand from the borrower that which another would have given as security for the chance, even though the loan is later fully returned to you intact. Reason, because exposing you to such a risk is truly estimable in terms of value. This is confirmed by the 10th session of the Lateran Council under Leo X, where any gain or profit from an unfruitful thing is condemned as usury, except for the title of labor, expense, or danger: For when indeed (as the council says) a gain and offspring are sought from an unfruitful thing that does not germinate, without any labor, without any expense, and without any danger. It is confirmed from the doctrine D. c. 6. (apud Petroc. l. c.) where the Holy Doctor thus says: Things which are possessed outside a peril are esteemed more highly than the same things existing in peril; and therefore the compensation is converted to the nature of the thing, by reason of which it is esteemed as worth more or less because of the peril.

It is confirmed 3. by the declaration of the Sacred Congregation de Sum. Moral. v. Usury. The case was as follows: In Sinese law it was stipulated that 30 percent could be received in loan, without regard to consequential damage or lost profit; and since there was danger of flight of the debtor, delay in settlement, or repeated borrowing with recourse to judges, it was sought whether this was permissible.

The Sacred Congregation responded, approving it, by Innocent. X. (and this declaration anno 1645. Asked for types in Rome: The Sacred Congregation of Cardinals of Saint Rome suited. The Church, by reason of immediate and precise loan, is not to demand anything beyond the principal; if however they receive something on account of a probable imminent danger, insofar as this case occurs, let them not be troubled, provided that there be a consideration of the quality of the danger and its probability, and that due proportion be kept between the danger and what is received.

Then the Pontiff, under the threat of excommunication, commanded all missionaries to observe everything contained in this decree and to make use of it. It does not hinder to say that it is not certain from this declaration, as Henry à Saint Ignatius says in the exemplar of this declaration authenticated by an apostolic notary. Furthermore, Henry opposes the aforementioned declaration to be approbative rather than merely tolerative; but it is answered that the Sacred Congregation states in the same place that they are not to be disturbed in their changes provided there be a reason for the probability of danger, which words certainly signify not mere tolerance, but positive permission. Furthermore, the Pontiff, as we have said, positively commands the observance of this decree; whence (as Demum opportunely objects, Henricus opposes that it should proceed in a case of extraordinary danger much greater than common danger.

It is responded that the Sacred Congregation replied concerning the dangers about which inquiry was made, namely flight, delay in solution, and difficulty in demanding, which dangers are not extraordinary among external ones. Objection is raised I. When the thief restores what was taken away, he is not bound to restore the price of the risk; therefore, much less is he bound to restore that mutuatively: for since the danger of losing one's property is not a title which binds the thief to give anything beyond the property to the owner, neither will it be a just title for the lender to demand; for a bare agreement does not provide a title. But it will be replied: No one doubts that he who lends something beyond his sort can demand something beyond his sort if damage has emerged; yet, if the damage was not taken into account in the pact, nothing can be demanded, because there is no pact as we say in n. 769 v.

But there is doubt. Therefore, even damnum emergens is not a title for demanding beyond the stipulated amount, but it is rightly a title for justly incorporating the claim into the contract. Thus likewise, danger without a pact is not a title for receiving anything beyond one's lot, but it is rightly a

title for contracting justly, when by lending to another one assumes upon oneself the burden of risk, which in itself is estimable as a price. Fur autem, quia inter ipsum et dominum nullum pactum intercessit, ideo nihil ratione periculi ultra sortem tenetur restituere.

Wherefore for the conclusion a certain rule is that, so that a lender may lawfully demand something beyond the stipulated amount, it is required that there be an intervening just contract; but in order that the contract be just, it is required that the lender take upon himself some extraordinary burden in himself. Just as therefore he himself can justly agree to pay something in compensation for certain damage that has emerged, so too, he can demand something (even though less) on account of probable damage, as is the case with the danger of damage. Wherefore rightly is it said that a perilous loan cannot be sold for so much as a secure loan. They object to the text from the Decretals on usury concerning Naviganti, where it is said thus: "Naviganti or one going to the marketplaces, receiving a certain amount of money in loan, because he takes upon himself a risk, is considered as one who will receive something beyond the usurer's due."

To this text, there are multiple responses given. Respondent 4. Palaus, et Cab. I. c. n. 3. there having been found an error and that a particular point had been omitted. Tourn. says that this interpretation can be rightly understood from the context of the aforementioned canon, where, when immediately thereafter the discourse is made about the one who exchanges grain or wine, which requires something due to doubt regarding a decrement for the time of restoration, it is subjoined: Likewise, he who gives ten solidi so that at another time the same measure of grain, wine, oil, etc., may be returned to him, should not be regarded as a usurer.

Therefore, the same statement is considered to apply to the first case; for even a small part suffices to show this; otherwise (as Fagnano says in the aforementioned chapter Naviganti, and c. 2, punct. 44, § 4, n. 145), the said text is understood only with regard to the external forum, where such a contract is deemed to be that of a usurer; and hence it is not said there that he is a usurer, but rather that he is to be considered as such. Just as Fagnanus says, si Episcopus accipit gratuitum munus ab aliquo, cui postea gratis conferret beneficium, in foro externo censebitur simoniacus, sed talis utique non erit in conscientia. It is responded to 3. with the same Caballine [Cabanal], and also Lugdunensis [Lyon Decretals] d. 25. n. 78. n. 416. tr. cap. 3. punct. 40. n. 92. cum et aliis communiter, the text is understood to refer to the case where by reason of the very nature of the loan the borrower would be obligated to undertake such a contract of assurance; or to the case where (as p. 338 understands it) the lender intends entirely to gain profit from the loan, so that he would not

otherwise lend. Idque expressè sentit etiam D. c. 6. (apud eumdem Petr.) ubi dicit: Quòd si mutuans non sperat lu- cum pro mutuo, sed onus periculi quòd suscipit, petit sibi compen- sari, ita ut esset dispositus ad mutuandam gratis pecuniam, si tale periculum in se non sumeret, certè tunc non peccat.

Concerning however Montes Pietatis, of which Busemb. spoke shortly above, it is to be noted that they were approved by the Lateran Council under Leo X with this limitation: It grants only the addition for the expenses of ministers and other things pertaining to their conservation as specified, exceeding not their limit without profit from those same montes. Hence P. Concina observes in § 7, p. 484, n. 4, and cap. 3 at the end, that three conditions are required for such lawful montes to be erected: I. That money be delivered to the poor within the limit of a certain sum, to be restored for a time determined [in advance]. II.

That the usurious sum may be exhibited to the usurers, and that this may be guarded by the ministers, and sold under the spear at a fixed time, and after retaining what is due to the mount, the remainder be restored either to the poor or to the lord of the pledge, if no poor person can be found; or even to the same mount, as Roncaglia says in question 3 at the end: which also admits number 5, if the mount is poor and is pressed by necessity to succor the needy, as some mounts have conceded under Sixtus V. and Clement X. Here however it is to be noted according to Concilium iure canonicorum n. 6 that the rich sin who without necessity receive a loan from the monte in order otherwise to gain profit, and therefore are bound immediately to restore the money. This however should be understood to mean, if the mont were poor, because then the provision for the poor would fail, for whose benefit these montes have been established. Pasqualigus, autem, apud certis litteris Pauli III. affirmatur licite posse aliquam annuam accessionem concedi his, qui pecuniam otiosam in praefatis montibus collocant.

But P. Ballerinus there clearly and rightly demonstrates these letters to be apocryphal. He nevertheless adduces P. on page 483, note 9, other letters of the same Paul III. Julii III. et Pii IV., in quibus id conceditur, sed cum hisce limitationibus, ut deponentes pecuniam id faciant zelo charitatis erga pauperes, et alias paratas habeant emptiones, ex quibus licite lucrari possent. Whether it is likewise permissible for private individuals to establish such mountains of debt?

It affirms. 2. c. 20. n. 194. 766. — « 9. Usura non est, si timens difficultatem aut fraudem mutuarii in reddendo tempore constituto, paciscaris ut, si tunc non solvat, aliquid det praeter capitale loco peina,

qua peina licite exigatur dummodo non fiat aliud intentione quam ut mutuatarius sic quasi constringatur ne sua culpa fallat. Wherefore, if the mutuarius cannot repay without his own fault, it will not be permissible to demand a penalty, as it is said that there is a manifest argument of an evil intention, if you wish not to be repaid at the prefixed time so that you may receive a penalty: and simply usury would be, if knowing certainly that another will not be able to repay, you yet burden him with such a penalty. See Bonac. d. 3. q. 3. p. 7. d. 347. . 2. c. 20. d. 45.

Therefore, it is licit to include a conventional penalty in a loan agreement, as commonly holds Lugo d. 26, sect. 6. Saturday I 6, q. 4, art. 3, sect. 3, with Henry from Saint Ignatius, n. 759. Wigandt, translated text, Book 9, Example 8, Question 3. Cab.

The. J. i. 6. c. 7. n. 4. . 2. c. 20. n. 428. n. 38. et punct. 8. §. 4. n. 75. cum Scot. ut mera debitoris sit notabilis, et culpabilis. 2. That there may be no intention to gain by applying a penalty, an intention which is presumed if the debtor were burdened with providing something for a time, from which he would not be able to extricate himself. Thus according to Bus. n. 75 at the end and chapter 3, that the penalty may be moderate and proportionate to the fault.

See 76. 1. — Whether the said debt is owed before the judgment of the judge? Neither is the general reason regarding penalties found in Decretum, distinguis 37, n. 4, and ibid., namely, that they should not be due before the judgment; yet the opposite is held more probablistically, Cap. 2, tit. 40, distinguis 44, at the end, and Sylv. Villal. et alii quia haec poma magis habet rationem pacti, peina.. — « 40. It is not usury to agree and receive something on account of damage reigning (provided that a true loan be made for such a cause), or to cease from seeking profit, either ceasing already or about to cease, so long as the lender warns beforehand: thus, if you need to repair your house, or now at convenient time to buy wheat, by giving a loan and thereby depriving yourself of your money, it is ruined and afterward more expensively you will buy wheat.

Item non poteris lucrari cum tua pecunia, quod poteras et volebas negotiando, ita ut mutuatio sit causa lucri cessantis vel cessaturi. Where it notes : 4. That you truly desired to negotiate with that money, and have another. 2. That you may lend on usury, or otherwise gain from commerce, rather than by interest-bearing loans, so that it merely be lent on credit.

That you may gain as much as you could have gained by trading or otherwise earning, deducting expenses; for profit is not in the acts but in

the potentiality, and still variable in various respects. Whereby to the discretion of a prudent man, it can be estimated whether he should lend for greater or lesser risk, and thus with the borrower determine accordingly, S. Thom. Mol. d. 324. 26. etc. Card. Lugdunensis d. 25. 5. p. 4.

Hence, he who did not have a soul capable of engaging in commerce, or if he had one, it was not hoped that he would receive any profit quickly, or it was not morally permissible to seek gain, can expect nothing beyond his lot: because this loan was the cause of ceasing profit. The same is true for usury if those selling on credit receive something beyond the strict price upon cessation of profit, for example, a thing worth 100 sold for 5 and reckoned after a year; because by selling on credit (which is this kind of exchange) there are more buyers, and more things are sold, thus compensating for the ceased profit, and so that does not cease to be gain from this sale. In this matter, read proposition 44 among those proscribed by XI. N., it is not licit for the lender to exact from the borrower what exceeds the interest due on account of the loan. Thus all agree with D. Thom. 2. 2. 8. art. 2. ad 4., who gives the reason, saying: For this is not usury of money, but damage.

But is it permissible to object to one who ceases? Sotus doubts 1.6.q.4.art.3, and Scotus, Durandus, and others deny this in Azorium; it seems that even St. Thomas has done so in loco citato, where he subjoins: But the recompensation of damage, which is considered in this, that from money no profit accrues, cannot be brought under a contract, because one ought not to sell what one does not yet possess and which can be impeded by possession in many ways. But commonly other doctors affirm this, as Cajetan 2:2:q.62:art.4. Sylv. 2. 2. q. 77. art. 4. q. 5. c. 2. d. 10.

Generated tome volume 4 page 233 question 4. Peter tom. 2. p. 399. q. 42. Wigandt tr. 9. ex. 8. q. 2. resp. 8. sect. 2. n. 36. . 14. c. 3. n. 79. cum P. . etc. Hunc titulum approbat l. 43. ff. et expressè videtur approbasse SS. noster Pontifex Benedict. XIV. In fine operis dicit: Nec tamen negatur posse multoties pecuniam a unoquoque suam per alios diversae prorsus naturae à natura contractus mutui rectè collocari et impendi, sive ad proventus sibi annuos conquirendos, sive etiam (nota) ad licitam mercaturam et negotiationem exercendam, honestaque inde lucra percipienda.

The reason for our opinion is that, as it teaches the same St. Thomas 2-2, q. 62, art. 4., in two ways one can be damaged: One way by depriving him of what he actually possesses; another way by hindering him from obtaining what was within his reach; and such damage should not be compensated according to equity, because it is less to have something in

potency than to have it in act. And this is also true in response to the second point, as the Sacred Doctor says, and in his very words: For he who sows seed in the field has not yet the harvest in act, but only in potentiality; similarly he who has money does not yet have profit in act, but only in potentiality; and both can be impeded from obtaining this many times over. It does not prejudice the matter that the Saintly Doctor understands (as is found in Objection 2) the cessation of profit due to the delay of a non-paying borrower beyond the specified time; for whether the profit ceases because of the delay of the borrower or because of the cause of the loan, the same reasoning applies to demanding the cessation of profit, since such interest does not owe to the lender except for compensation of damage, which in either case happens equally to him. To the text of St. Thomas, first related, Sylvius responds in loco citato that St. Doctor does not there deny that the lender can demand the whole profit achieved, not merely a part thereof; and rightly so responds he, since St. Doctor himself teaches in the second place mentioned above that a thief must compensate for damage, not according to equity; adducing the reason that it is less to have something in potency than to have it in act.

If therefore a thief is bound to compensate the master for the loss of profit from theft according to mere estimation of expectation; why, according to the same estimation, cannot the lender demand the loss of profit from the loan? This is most confirmed by the bull of Benedict XIV. See in fins Opera Epist. VI. ad n. III., ubi dicitur justè posse aliquid exigi ex, si concurrant justi tituli, nempe si pecunia aliàs collocanda t ad licitam negotiationem. 1. — Ad hujusmodi tamen interesse exigendum tres conditiones untur: I.

Conditionem ut interesse ab initio in pactum deducatur; ost contractum mutuans nihil petere potest, etsi immemor fuerit damni: nisi vi, metu, vel fraude coactus sit a mutuatario, ut d. q. 78. art. 4. 79. et alii; vel nisi involuntariè cosit ad mutuandum, quamvis licitè, v. gr. à rege ad bonum publicum. Pariter tenetur mutuaturius ad damnum et lucrum cessans, si interpellatur ad solutionem; vel terminus præfixus elabitur, et ulpabiliter non solvat, S. Th. d. 1. et 3.. 9. n. 82. I dubitatur hic: an in contractu sit necesse praemonere mutuatale vero damno, vel alio titulo justo, pro quo possit exigi aliquid sortem? Ma sententia negat, quam tenent Lugo d. 25. sect. 6. n. 74. et um ap. ibid. c. 3. n. 83. Reason, because a lender cannot reasonably intend his own property to a unjust title, but ought to contract with due capacity and consent to a just title. Maxime regulariter mutuaturius non retardaretur à contractu, ex eo quod justo titulo lucrum exigi. Unda sententia tamen verior (licet olim contrariae adhæsi) docet omne esse necessarium; ita cum Bus. ut suprà, 140. P. Concina tom. 7. p. 406. num. 4.

Contin. Tourn. on Usury. Sect. 2. Quartà, namely, when supposing that a contract of usury is being borrowed, he does not consent to what might not be just, in which perhaps he would not consent if he knew it to be unjust; for he takes the title as unjust, possibly hoping not to incur usury, or to have them repaid to him, or at least that another will restore what was mortgaged; otherwise, as Concina well says, he might possibly avoid a greater detriment from the loan than benefit. But the reason is more universal because in contracting it is not sufficient an interpretative or conditional intention, as we say in n. 773., but rather the actual, virtual, or at least sometimes held and then withdrawn will, according to what is said in l. 6. de Sacr. miss. n. 324. Therefore, the profit to himself he has ceased; let it be imputed to his negligence; for thus says S.. q. 3. de malo art. 4.

He ought to have guarded himself against incurring damage; nor should he who receives a loan incur damage at the expense of the lender. But it must be said accordingly, if indeed there were a title both to lend and to lend more abundantly in the contract, they would consent to enter into such a contract in a manner less advantageous than they could, as we shall say shortly in the question. IV. n. 773. The condition is, that no more be exacted than the profit which one expects from it; according to the estimation of the hope and danger, and after deducting expenses, from another legitimate contract.

See n. 84. Namque autem debet deducta esse aestimatio laboris in illo lucro impendendo? They affirm probably; but they think that it should rather be denied more probatively, and with Bon. III. The condition is that true damage or cessation of profit be a cause of the loan; for if the lender has another sum of money with which to engage in trade instead; or if the profit which he loses by making the loan from his business activities can be and wants to be compensated through some other way or artifice, by means of which he could not have dispensed with trading; then it is unjust to demand anything unless it would entail greater inconvenience in that other form of earning a profit.

See n. 89, punct. 9, n. 85, etc. Nam etiam si mutuans licite exigat interesse damni emergentis vel lucri cessantis, si mutuet non compulsus alterius precibus, sed ipse se offerat ad mutuandum? Corrado and some others deny this in . 2. c. 2. n. 104. Because when the lender, not having been asked, offers the loan spontaneously, the cause of profit does not cease for the loan or the one to be lent, but by lending himself he impedes his own profit. But it is more probable that the same is affirmed according to . 25. num. 107. with Mol. [Molinaeus], and thus by accepting the loan, the true cause of cessation of gain is made, truly impeding that the mutuator unjustly gains from his own money: just as if someone offers in favor of

another to omit the cast net, he lawfully demands a price for the hope of that catch, because the other is the true cause, so that the hoped-for capture of fish may be impeded for him.

But here several questions are to be elucidated. 770. — Question I. May the lender initially agree to have a certain sum of money repaid when either loss incurred or profit ceased is uncertain, or at most only probablistically future? P. Concilium distinguishes in tom. 7., p. 408., n. 5., et p. 438., q. 4., and says that if there is a certain damage to be incurred, or loss of profit, namely because opportunities for gain are actually or nearly present, and only the greater or lesser amount thereof is in doubt, then it can well be estimated by prudent arbiters; and from this a quantity to be paid may be drawn into the contract. Contra vero, si damnum non est certe eventurum, vel si occasiones lucrandi tantum probabiliter occurre possent.

Reason, because in these cases it could happen that the damage does not occur, or the opportunities do not arise, and then the mutuator would be condemned solely on conjecture. But rather let them send. cit. n. 8 4. cum Malder. . Tap. . l. 8. t r. 3. c. 8. §. 3. n. 4. et 1 4. cum. et Decoq. apud Cont. Tourn. deusura art. 3. sect. 2. You ask whether it is licit to exchange time for a certain quantity that can be bought and sold, keeping debt in proportion out of fear of damage or loss, or perhaps hope of future profit.

Reason, because if the equal quality of the debt should be preserved; for as, without damage, a profit would be made by lending, so on the contrary, with coming damage, a greater profit would be made. It matters not that a certain number of events may later not occur: for an agreement is made not on account of what will certainly happen in the future if it should come to pass, but rather on account of the probable risk thereof which is assumed, and the act is esteemed at a price: just as one does not sell a net by casting it, but sells a probable catch that has already in fact taken place. Obiectitur. Howsoever, §. Item Labeo, f f.

To. Aquinas has decreed, whoever breaks any trust, neither will anything be taken from the lord nor solved by the master or bishop for the needs - but only a certain damage to the retia. But it is responded to according to Glossa (in the said verb being done) that at that time the Lord precisely in the Law Aquilian has no action for impediment of the capture of fish: but he has another action elsewhere from the law. If it is stated in book 1, chapter 2, section f, of De Act. empt. et vend.: If a net is cast and the fisherman does not wish to throw the net again, the matter is to be estimated with uncertainty.

The Glossa subordinates: It is estimated according to what is most probable, which is so with respect to the capture. Whereby it appears that likelihood can compensate for a considerable number of probable events, even though they are uncertain. By the same reasoning, Bonaventure says in d. 3, p. 4, n. 13, that the changer, who was destined to use the money for negotiation not with certainty but only with probability, can probabily demand something in proportion to the probability. But thou wilt say: if something can be demanded in proportion to the probability of the application of the money, therefore something can also be demanded in proportion to the possibility of applying it.

I respond by denying equality; possibility is mere potentiality, but not a hindrance to application: hence, from it the mutuator derives no actual and positive basis for future gain, but only a negative one. On the contrary, the probability of future gain has indeed a positive foundation of such gain or hope of this kind, and therefore it is estimable in price. What if the mutuator hangs solely in intention, whether he wishes to negotiate or not? They still affirm: Article 9, Title 1, Chapter 3, Section 4, Note 3, and Lugo, Day 20, Note 2, with Salas, that something can be demanded because it is estimable in price; for by depriving oneself of the power to deliberate and assign money for negotiation in this grace of mutual exchange, one is not bound gratuitously by such hope and power to be deprived: just as if someone were to adhere, whether he wishes tomorrow or not to fish, he can reasonably demand something in favor of his security against fishing.

And this does not seem improbabile, since this obligatory privation obliges the mutuator not to repay the loan for some period of time, and it is estimable at some price. Although it was permissible at the beginning to include as a term in the contract the damage that would occur, or the profit that would cease and remain uncertain, nevertheless it will never be permissible from the outset to demand such interest through a contract, as commonly taught by Lugo d. 25, n. 406. Azor, 3. p. 1. 5. c. 5. q. 3. Concina to. 7. p. 446. n. 8.

Reason, because if you lend a hundred and for lack of profit take ten, it is no longer a loan of a hundred, but ninety: to deduct from the loan made on hire before the time specified by the contract as a convenience of the money lent is a burden, and this is usury. However, Azor concedes, ibid., that a profit can be demanded at the beginning in another form: but correctly this is also condemned by the Council, ibid., because to foreclose on what will be lent before time by imposing an obligation is usury. 774. — Question II. Can it be demanded that the profit cease upon the loan of money intended for trade, if one has another sum of money not intended

for such trade, to which nevertheless one could substitute the transaction? And indeed, if you had reserved that other sum of money for the use of your family—namely, for supporting the household, providing dowries for daughters, alleviating old age, or lest you expose yourself to danger—then you lawfully exact a remnant profit, because you are not bound by the reason of your loan's prudence being neglected.

Thus in chapter 2, section 20, note 87, with reference to chapter 9, note 86, they hold it certain. But it is doubtful whether if you could have supplied another sum without such inconvenience, you would be entitled to claim lost profit? They probably deny that at that time something can be demanded, because then your profit from the cause of the loan does not cease for you. But c. 4. p. 15. n. 7. 9 tr. 4. c. 3. §. 4. n. 2. pr. c. 4. n. 44. cum Molin. 3. p. 2. n. 864.

They also maintain probingly that it is licit to demand a profit ceasing from that money which you have determined to expose solely to negotiation and risk, because there truly is a loan as cause; so that your hoped-for profit from that money may cease to accrue to you; nor is the money not destined for the purpose of the loan exposed for negotiation. I would not however admit this, unless, when you give a loan, you truly have the intention that that money reserved for negotiation not be substituted. 772. — Question III. Whether, if you have not destined the money absolutely but conditionally for a business transaction, and if you say: I would like to engage in business unless many people ask for a loan, then can you demand interest? Chapter 2, canon 20, note 90 says that it is probable that you can do so, because although no single loan is the cause of cessation of profit due to the multitude of those receiving loans, all together are the cause of the cessation of profit; however, truly, in order for these people to receive a loan, you already have factually been deprived of profit, and from another side they do not consider themselves injured by this lending. And the same is felt [or: and they feel the same].

Stipulation. from the seventh part [of the Decretals], number four, note forty-four. But you will say: this person commits usury, because he effectively desires to gain profit from a loan, and ineffectively from commerce. It may be replied: although he has an inefficacious will to negotiate, yet he still wishes efficaciously to justly gain, and because he can already justly gain from negotiation, consequently it is just that he gain from mutual loan, since for this mutual loan itself is a true and efficacious cause, so that the gain from negotiation may cease to be due to him. However, he rightly observes that this should not be admitted lest there be a pretext for justifying usury; for (as it is noted here: and he should lend only as much as he has truly lent. 73. — Question IV.)

Whether, if someone in good faith contracts an usury and demands profit; after the fact becoming known, he can retain that, provided it could have been contracted with some just title, namely on account of danger, etc., the prevailing opinion affirms this, because whoever contracts in good faith is always held to have contracted with a mode of justice by which he could contract. For indeed he drew this conclusion in such a manner because he thought it permissible; hence, he virtually intends to contract in any licit manner by which the contract could be rendered honorable. Thus Lugo. 25. sect. 9. Sa, c. 3. st. 5. n. 38. et 8. c. 8. §. 3. n. 24. cunda sententia tamen verior quam tenent n. 39. l. 2. c. 20. dub. 42. num. 104.

Concilium tomum septimum, paginis 465 de usura, articulus quintus, conclusio tertia negat posse in eo casu atorem lucrum perceptum retinere. Reason, because it can minimally be said that he had possessed a voluntary will or implicit will, since he did not think of any other act than that of the usurer. In that case we said in no. 769 that there was merely an interpretative intention, which is insufficient to constitute a contract. But.

It does not hinder to say that this changer can burn profit, as a possessor in good faith, who is bound only by what he was made so; but it cannot be said that he is a debtor who through reason of the loan ought not justly to have received the profit. For it is replied that something beyond the measure must be exacted in a loan; altogether it requires that the lender be warned of his just title, as we said above under number 769.d. Or at least, that both the borrower and the lender expressly or implicitly consent to a just title, at least intending explicitly every better way they can: which conversely is sufficient for exacting what could lawfully be exacted from that just one even if not expressed; as Croix says in book 3, page 2, number 924. and number 105. Our most holy Pontiff Benedict. XIV. in his bull concerning Usury (see in the archives the Epistle.

Encycl. VI.) whereafter he said n. III. By these means it is by no means denied that sometimes one and the same titles can be held mutually by others (as they say), those very same ones together with number 105. Our most holy Pontiff Benedict.

XIV. In his bull on Usury (see in periode Epist. Encycl. VI.) whereafter he said n. III.

By these means, it is by no means denied that certain alien titles (as they say) may in some manner or other mutually come to coincide with one another, from which a just and legitimate reason for demanding something

more than the mere intrinsic debt might arise. Then it must be explained what just titles there are for demanding something from a loan; whereupon he immediately adds: Nor is it denied that money belonging to anyone can be rightly placed in various utterly different contracts from the nature of a loan and exacted therefrom, whether for acquiring annual revenues for oneself, or even for carrying on legitimate trade and obtaining honest gains. Finally he says that it is false that just titles or contracts are always and everywhere present; hence he warns: Therefore whoever wishes to consult his own conscience should first diligently inquire whether a just title from another contract coincides with a just contract from a loan, by whose benefit, which he seeks for profit, he may be rendered altogether free from loss and immune. Afterwards prudently he instructs: He who desires to be immune and intact from all taint of usury... should first declare the contract to be instituted, and explain the conditions to be inserted, and demand what fruit that same money shall yield after.

And this must be diligently observed concerning what the Pontiff admonishes confessors about in the same bull: Keep far from the utmost limits; and indeed some judge those matters with such severity that they accuse as illicit and usurious any profit derived from that money. On the contrary, some indulgers are so disposed that they consider anything as free from the turpitude of usury whatever profit it may bring. Let them not adhere too closely to their private opinions, but before they respond, let them examine many writers who are more commonly recommended among theologians. Then they receive those parts which are confirmed both in reason and by authority.

And si disputatio insurgat, dum contractus aliquis in examen adducitur, nulla om- nino contumeliae in eos confingantur, qui contrariam sequuntur; neque illam gravibus censuris notandam asserant, si praesertim ra- tione, et praestantium virorum testimoniis minimae careat. That they might advert to this, I desire those who are not hesitant about giving harsh judgments on many writers based on frequent insults arising from their sentiments, may not doubt that such conduct is unworthy, especially if it lacks reason and the testimony of reputable men. 774. — Question V. What kind of agreements can lawfully be established in mutual exchange? In primis haec regula generalis, tradita a S. Tb. 2. 2. q. 78. art. 2., attendenda est: quod omne onus pretio aestimabile impositum in mutuo, tanquam debitum ex justitia vera sit usura.

Secondly, if something is demanded which is not measured by money, such as benevolence, friendship, and similar things: thus the Holy Doctor. It is certain and also true that it is usury to demand a thing which money

does not measure, such as benevolence, friendship, and similar; thus says the Holy Doctor. Moreover, it is certain that it is not usury to demand from a loan what is already justly owed; hence, in a loan it can lawfully be demanded that the other cease from private vengeance, from unjust harassment, etc., according to what is said about Simoniacs, canon 98. Thus in the second part, question twenty, doubt seven, note fifty-seven, third point eight, section one, note fifty-four. Cum. Caj. etc. 775. — But it is doubted whether in a loan agreement a pact of minor legesiminis can be appended, namely, that through non-performance for a certain time a pledge may be acquired by the lender?

Commonly do DD. deny the seventh point, number forty-seven, unless the pledge be worth less than the chance, or unless it be a certain licit pact that if at such time as solution is not made, the pledge may be sold, and from the price the lender retain only his chance. Whether, however, the pact is valid so that if the solution is not fulfilled in the penalty, the pignus may be lost, even though it is worth more? They deny Vasq. Palaus, et Azor, loc. cit. n. 48. juxta dicta n. 766. ubi poena conven-tionalis licita jam fuit probata (1). 776. — Notandum est autem, quod, si mutuator accipiat loco pi-gnoris rem fructiferam, tenetur fructus ejus in sortem commutare; et ideò pactum, quo creditor uti possit pignore, ejusque fructibus frui, donec debitum solvatur, dictum antichriseos (valgò contratto à godere), communiter rejicitur de se, praeciso alio titulo, tanquam usurarius: est certum cum S. Th. 2. 2. q. 78. art. 2. et communi, contra Dianam; quia, cum res adhuc remaneat in dominio mutuatarii, illi soli fructificat, ex e. 1. et 2. de usuris.

But he is bound to restore the fruits which through his own negligence he has failed to collect. See n. 46. However, the pledge given as promised dowry is excused, whose fruits are not reckoned in the dowry, to bear the burdens of marriage, as stated in n. 6 and q. 7 from c. Salubriter, de usuris, where it is permitted: The son-in-law should not be compelled to include in his share of the inheritance the fruits of possessions which are pledged for the numerated dowry. And this is the reasoning: let it be that the fruits of the pledge exceed the burden of the marriage when the pledge is granted absolutely and at the time when the dowry is constituted.

Otherwise, if it is given solely as security for the dowry, when the dowry has already been constituted; similarly, if the groom does not bear the burden of the marriage. See n. 49. 777. — Doubt is raised as to whether it can be stipulated in a contract that what is owed to the matron by him shall be returned not out of justice, but out of charity or gratitude; namely, if a physician treats when there is no other remedy: if an advocate defends: if a rich person assists in great necessity; likewise, if one has

vowed almsgiving, he should fulfill it; if one is commanded to hear mass, etc. Azorius p. 1. 5. c. 7. q. 15. Bonac. d. 3. qu. 3. n. 7. item Covarr. Salas, in the aforementioned location cited, point 8, n. 55, denies that this can be done without the stain of usury, because the pact adds a burden of justice which was not previously there, and he holds this to be true according to number 42.

Innoc. XI. n. 15. saying: every then, new burden imposing mutual, usurer to be. Against this, however, Lugo, day 25, section 5, note 49, chapter 20, question 8. Contra- 500 Lib. 4.

Treatise 5. On the seventh commandment of the Decalogue. Tome 7. page 468. note 2. section 4. verse. I say this, namely, because, as they argue, such an additional obligation does not deserve a reward, since it benefits both the one who is benefited and the one who benefits, who is thereby relieved of the obligation he already had. They add that if from the judgment of all a pact of mutual obligation can be deduced, such that one party desists from inflicting injury upon a man; much more should one desist from inflicting injury upon God.

Despite the objections to this second opinion from so many doctors, I have never found it fitting to acquiesce, because every burden imposed on the borrower by the contract is bound to fulfill justly, and thus it has indeed escaped a valuable reward; so that if after such a contract the physician does not provide treatment, nor the advocate defend, they will be held justly to compensate the damage that will result from the omission of treatment or advocacy, for which compensation was not previously obligated. What therefore does it matter whether a imposed contract yields or not to the advantage of the borrower, since in this lies the essence of usury, that an estimable price be exacted from the loan? And wonder why, as stated at n. 41 (and as we said at n. 59), they have affirmed with certainty according to St. Thomas that simony is committed by one who gives something to someone with an obligation to perform some spiritual work, even though that thing is not for the benefit of the giver, because it was a one-sided contract; whereas here they hold that it is not usury to impose a similar obligation; since it is commonly said: What in spiritual matters is simony, in temporal matters is usury. However, all teach rightly that usury is not to be inferred as a pact for solvendo id quod jam prius erat debitum ex justitia, nor for tollendi injustas vexationes; because then nothing would be exacted at a pretio aestimabile, or of what the mutuarius might have demanded as a price. Thus Concina p. 468 n. 4.

And moreover, and others 778. — There is doubt 3. whether it can be deduced in a contract such that an injury may be forgiven as a loan, to

which neither was one bound by charity, but could justly seek satisfaction? Assert they, Sot. Navar. et Sylo. apud n. 57. quia laesio tunc ratione amicitiae naturaliter condonari solet. Far more probable and true do Lugo deny in their day 25. section 8. number 38., because an obligation truly estimable in price would then be added.

However, Lessius in lib. 2, cap. 20, dist. 7, et cap. cum secus vero, si esset fedus amicitiae, ut loquuntur, ex qua exigatur, ut alter libenter injuriam remittat; sed bene advertunt hoc palliatae usura periculo non carere. 779. — Whether it is permissible for a contract to confer upon the lender the office of the borrower, so that he may receive from him willingly the injury? Others say that, if this be sought from justice, it would indeed be usury, and it is common with S. Th. 2-2-q78-a2-ad3-and-aliis-contra-paucos-ap-.n.58. If, however, it be sought ex amicitia aut gratitudine; they say that this practice cannot be admitted, unless perchance in some rare case. But I absolutely say that it should never be admitted according to proposition 42.

Innocentium. XI. Quandoquar aliquod exigebatur ex sorte utrimque, quasi de gratiæ debitum, unde usuras excusabat. Hence, such an incumbent office was bound to either resign from it out of justice, or to reckon the reward of the office as a debt in the sortilege, unless it be presumed that this is not wished mutuatively; since otherwise it would be considered an invalid collection. See 2. c. 20. n. 62.

Lugo n. 42. Salm oc. cit. num. 59. 780. — It is doubted whether it may obligate a borrower to give those things which he was bound by gratitude to render, for instance, that he may buy himself necessities from the lender, lodge his house with him, cultivate an acre of land with just remuneration, etc. Entirely negated, because not only are these demanded as debts due to justice, but also as debts due to gratitude; according to the same proposition 42, as we said: paragraph 8, section 2, note 61, distinguishes that simply to ask a borrower to render these things freely from friendship would not be illicit of itself; and in this it seems expressly to consent S. Th. 2. 2. q. 78. art. 2. ad 3. where he says: If however the gift is not given as if under obligation, but out of benevolence which falls under estimation of money, it may be received, demanded, and expected. This doctrine runs thus when spoken speculatively, but correctly in practice: It is not to be admitted what is said in 3rd part, 4th book, ch. 46, n. 3, that it is licit to oblige a mutuarius to perform these things, if the obligation is imposed not as a burden, but as a condition sine qua non for giving the loan; because, upon acceptance of the condition, the burden is already imposed, and the mutuarius is thereby obliged to do that: which never is licit ex ; see next note 781. — If, however, the pact is remutandi,

St. Thomas 2nd part, 2nd question, ch. 78, art. 2, ad 4, teaches thus: It is licit for one who lends to receive from another a different loan at the same time; but it is not licit to oblige him to make a future loan. Therefore, it is licit for the borrower to be obligated to remutuate at the same time as the loan, because you can petition from another party the office of friendship which he demands from you; provided that this not be more burdensome to him: and thus you could equally petition that at the same time he provide you with a house to live in, sell grain, etc. But otherwise if you were obligated in the future; as is said by S. Th. 2. c. 20. n. 53. et punct. 8. §. 2. n. 62. 63. et 64. and others, against Bann. 782. — It is doubted 6. whether it is licit for the contract to be made such that the thing lent is returned in the same species and quantity when credit is given for more than its value?

In hoc certum est quod licet, si æquè dubium est, an valuat rei sit augendus vel minuendus: vide 2 c. 20 dub. 17 n. 145. It is certain 2. that, if you were to keep the thing until the time when you firmly believe its value to be augmented, you can demand that it be returned in the same quantity, or even its increase, deducting however the estimation of danger, or expenses incurred in keeping the thing. Thus Habert, Concina, etc., with note 67. It is certain 3 that although old grain may be lent so that new grain may be returned, it should not be believed to be considered worth more, nor better than the old.

Thus . with . n. 11. The question therefore is, whether one can ask for that thing to be returned to you which you are not going to keep, in the same quantity, at the time when you believe it to be worth more? They affirm Soto and Molina in chapter 20, note 454. And this is adhered to because, as they say, this is the nature of a loan, that the thing be returned in the same quantity, and because through the borrower it is established that the thing not be returned before that time.

But it teaches: given that you would not have been certain to preserve the thing; for otherwise correctly it is said in Bonaventure 70. Azor, et . But I do not see how this precision could licitly be accomplished, when the thing would not be kept for a time until surrender, and certainly, or more probably considered worthier; for the price of the thing in itself always pertains necessarily to the substance of the thing. But I think from the contrary with n. 71 that, if certainly or probably at the time of restitution the thing is considered less valuable, you may demand a greater measure so that you may be adequately indemnified.

These doubts, however, have their place when one considers and credits the thing as being more valuable; but if there be no good faith

consideration regarding increase or decrease in the thing, then you can readily agree that the thing may be restored to you in the same quantity. Thus dub. 47. n. 149. Pope's Decree and ibid. n. 72. This, however, cannot be said of a loan of money; they hold with S. A., but Azorius, in conclusion, when he adds well may the contract stand good, that money be returned in the same species and number of coins, when no thought is given to or intention made for an increase or decrease, thus expressing the agreement: this opinion seems more probable to me at least if there is a common danger of increase or decrease, as P. Concina feels.

The contract, however, for returning money in a different species from that which is delivered is altogether usurious, because an appreciable price is imposed as a burden, as they say in number 74. Concina and others commonly. Up to this point concerning agreements; regarding which Anacl. carefully advertises in his question on usury, chapter 4, at the end. Chapter 3.

Of contracts. Dub. 7. when commonly used among others, that a contract, which in some region is customary and accustomed to be celebrated by upright men, is not easily to be condemned. But let us proceed to the other questions which remain. 783. — Question VI. Whether the usurer acquires dominion over the usury profit?

They affirm that Lugutius on the 25th section 41 number 206 and Scotus say. Yes, according to point 42, number 406, even though it is coerced into lending, and thus the usurer is bound to restitution, it nevertheless gives freely and transfers dominion; just as he who sells a thing out of fear transfers ownership. But the opposite must be held according to S. Thom. 2-2-q-78-a-3 and commonly with n. 107. And the reason is because the usurious contract is null by all law; but mere naked delivery of a thing does not transfer dominion, as may be found in l.

Never, from the Fathers on acquiring dominion over things. 784. — As for the fruits acquired through usury, it teaches that. S. Thom. quòd si percepti sint ex re usu consumptibili, tunc estitui non debent, quia sunt fructus industriæ; secùs, si percepti nnt ex re non usu consumptibili, putà ex domo, agro, quia (verba. They are the fruits of things belonging to another, and therefore they are owed to him. And this holds true, even if the usurer does not receive the fruits, provided that he would have received less otherwise.

What about the fruits which the Lord would not have received but the usurer has taken? Lugo, d. 25, sect. 41, n. 209: it is not to be restored, because according to his own judgment the usurer acquires a rare

dominion, and he is bound only to safeguard indemnification for the lender. We, however, contrary to our aforementioned judgment above, consider i 35 to be otherwise—Question VII. Whether one is bound to restore money given in counsel for usury, or to lend it to the usurer, is a question we consider otherwise above, i 35. — Quæstio VII. They deny that those are causes of effective damage, because afterwards the debtor is held to refuse the repayment of usury.

But as regards this, it is much more probablier (at least I say so far as regard the one who recommends usury), Bus. here with . 2. c. 20. dub. 21. n. 478. Lugo d. 25. 5. cum etc., quia vere ipse est causa injusti contractus; et licet debitor posset non solvere, si solvat ex causa sua injustè solvet. It is commonly held that usury does not sin, nor is one bound to restitution for having lent money with interest in order to gain thereby; and hence the first judgment is sufficiently justified on another ground, because it is reasonably presumed that such a loan is consented to. As regards him who delivers money to a usurer, see Lugo l. c. Quoad eum autem qui tradit pecuniam usurario, oncina tom. 7. p. 534. n. 7. n. 478. et . c. n. quia proximè itur ad damnum mutuaturii. But Lugo in the same note 246 rightly rejects that same reason, unless he provide money for the grace of the loan.

Or rather, as I add, if he who lends the money himself could not deny it without causing damage to a higher order, which would be the damage of the lender, according to what is said in n. 574. v. Second. 786. — Question Eighth. It sins, and is bound to restore by placing the money at his disposal whom he knows will abuse it for usury? Respondent: 2. c. 20. d. 24. et punct. 43. n. 416. cum: sed non teneretur ad restitutionem, quia in hoc injuriam non irrogaret mutuariis.

Nevertheless, it is felt by P. Cone. according to St. Thomas 2. 2. q. 78. art. 4. ad 3., where he says: "Nam si quis committeret pecuniam suam usurario non habenti alias unde usuras exerceret, vel hoc intentione committeret, ut inde copiosius per usuram tueretur, daret materiam peccandi, unde et ipse esset particeps culpa." Wherefore if such a deposer is a participant in guilt, he will not be a participant in another guilt than that of injustice, which is committed by the mutuator. But nevertheless, it seems more justifiable to say that the deponee is not bound to restitution: for his action is not injurious but rather gracious to the mutuarius, since he has more grace than ill-will towards the deposition of money, so that he may provide for himself in necessity. Therefore, given that the mutuarius is not unwilling in this, the deponens, although he be a participant in injustice so far as he injures the virtue of justice generally, according to the judgment which we held in the treatise on charity, lib. 3, n. 45, v.

Thirdly, where we said that he who gives occasion to sinning not only wounds charity but also the virtue which is induced to wound one's neighbor; yet he is not bound to restitution, because he does not wound justice in particular, namely the special right of another, nor does he inflict injury upon him, since with respect to the deposer the latter was not unwilling. And thus it is understood according to St. Thomas 787. — Question IX. Princes, judges, and advocates, who are the cause that usurious payments be discharged, are bound to restoration? It is responded that they are bound just as those who do not exclude usurers from their places: nay, they are excommunicated ipso facto in Clement.

From a grave matter concerning usury; except nevertheless that for the sake of the public good it might be permitted to expedite this. Thus. Article 179. Point 43. A. 147. With. 788. — Question X. If your debtor is a usurer, can you lawfully exact usury which he assigns to you to demand from the borrower? He denies: and if you demand them, you have a right to receive them back; provided, however, that it be established that that debt is for usury. . n. 149. 789. — Quæstio XI.

Does a sinful servant who has begun to engage in usury against his lord commit a sin? It is certain that servants who are less principal, namely those who merely write down sums, enumerate finances, deliver pledges, and do similar tasks, are not bound to restitution, nor do they commit sin. Thus Croix l. 2. num. 268. l. 5. e, 1, §. 4, a. 49. And it is doubtful whether those who demand usury and are constrained to do so are bound to restitution? Sa, ibidem licet dicant peccare, tamen excusant a restitutione, quia isti non sunt vere causa exactionis, vel tantum sunt materialis et remota; cum .

Med. Salas, etc., think themselves bound to hold that they are indeed causes cooperating proximately in an unjust act: and this seems more probable according to loc. cit., if they cooperate with debtors in something disagreeable, as though they compelled them to payment, or gave them pledges; similarly, if in something not disagreeable to them, namely, if they simply exhorted them to payment, or demanded usury without compulsion; because in this case debtors are not considered unwilling. But I would not excuse the demander on the grounds of cooperation in sin alone from the servant's duty. 790. — Question XII. Whether an heir of a usurer or of another debtor is bound to make restitution in full?

To be distinguished: If the debts are hypothecary by contract, it is a common opinion that all are bound to restitution in solidum. It is doubtful whether debts personal to a deceased person from a crime are still held in

solidum: canonists teach otherwise with the conclusion 5 at the end. They argue this point from c. Tua nos 9. de usur., where it is stated: The sons are bound to restore usurious amounts by compulsion, since their parents are so obligated. But sufficiently probatively Habert Pontas, Sambov., etc., say that these heirs are held only pro rata, unless themselves they have cooperated in the delict of the deceased: and this is proven from l. 1. c. de delictis defunct. where it is said: After the contestation of the suit, he who did the act (or damage) to the deceased, his successors are held in solidum; otherwise, according to the quantum that comes to them, absolute law requires this.

Cajetanus gives this reason in responding to the text Tua nos, as opposed to what was said above: Sons are bound just like the father by obligation for their own goods: but there is a difference here, in that the father is the entire person and therefore has the whole obligation; whereas each heir (that is, son) is only a part of that person, and consequently bears only a part of the obligation. Question Thirteenth. Here too it would pertain to inquire whether it is permissible to borrow money from a usurer and to offer him those in return? But enough has been said above concerning charity in Book III, number 47.

Second; and n. 77. v. 4. Licitum. → novum (præsertim certo tempore) est usura, si mutuans sciat no-→ vum fore melius, et majoris pretii, Sylvest. . d. 15. n. 41. « 12. Usury according to common opinion is such that if after lending you obligate the lender by civil debt to later again lend to you or sell to you, or at your workshop purchase goods, or hire his own services: because such an obligation is a thing estimable in price, since it deprives the lent item of its power elsewhere to be purchased and hired. . 1. c. 20. d; » 8. Card.

Lugo on the 25th, number 46. See 3. t. 4. c. 16. n. 3. Good. l. c. p. 3. « 13.

Usury is to lend either money or goods upon such a pact that meanwhile, if it is not repaid, one remains free from taxes or just debts to be paid. Salas, "C. Lugo n. 64. ex communi." 14. Item mutuare eà lege, ut mutuaturius eam pecuniam exigat à debitore mutuantis, à quo non facile extorquebit. What I add is this: if he spontaneously assumes that burden, insofar as he can easily obtain it, it will not be usury.

Item, si frumentum quod alibi habes des mutuum obligando, ut tibi reddatur hoc vel alibi (cum majoribus sumptibus vel laboribus) ubi plus valet. Ibid. « 16. Usura etiam est, obligare mutuaturium, ut partem mutui accipiat in mercibus, quibus non indiget. Ibid. « 17. Usura etiam est obligare mutuaturium ut partem mutui accipiat in mercibus quibus non

indiget. »

In mutuo pecuniario, nisi aliter conventum sit, si quis det mu- tuo, v. g. 400 forenos, non potest exigere plus quàm eorum pretium, et valor tunc fuerit. Wherefore, if their value should then increase, he cannot demand 100, because he would receive something above his due. Because if the value decreases, the mutual debtor ought to repay more than 100, because otherwise he would not restore to equality. See. 2. c. 22. n. 149.

Book 3, Part 4, Chapter 46. Good. L. C. P. 3. (Vide note 782. verse. These doubtful matters). » 48.

Nevertheless in mutual dealings with other things, such as wine, wheat, etc., matters stand otherwise, because if someone, for example, lends another 10 modios of wheat, whether the price increases or not, he can demand repayment of 10. The reason for the disparity is, because in money ordinarily one does not look except for value, or price, unless otherwise agreement is made concerning certain and legitimate causes. Wherefore restitution should not be made except for an equal price. But in the case of grain, etc., the very matter is considered, because loaned grain is not sought for the sake of the price of the grain, but for the sake of its own body and substance: therefore, even though the price of that may increase, one can demand back as many measures as were lent on loan.

Meanwhile, however, certain ones speak about these matters in the same manner as they do about money. See c. num. 14. and Bon. l. c. (See what is said n. 782.) 792. — "Do you ask: What obligation and penalty there is for usurers and coopers? » Resp. four. Even a non-obvious usurer and his heirs are bound to restore; nay, all those who effectively cooperate with the usurer in any way: for instance, judges, temporal lords, notaries, servants, advocates, who assist or compel borrowers in any manner towards the repayment of usury.

I said (positively or efficaciously), because having themselves negatively, they are permitted to lend money at interest for a just cause and out of necessity of the poor. Furthermore, in practice, they are almost excused on account of presumed will of the borrowers, the principal servants. See the aforementioned [notes] above no. 789 and lib. 3. no. 78. • 2. A public usurer, or one notoriously such, ought not to be admitted to communion at the altar, nor absolved, until he has restored the usurious sums; and he who knowingly is buried in holy ground is ipso facto excommunicated.

Added: c. n. 24. His testament is ipso jure void, unless he shall restore

before death. See chapter 14, decree 22 (Item usurarii sunt infames. paragraph 14, number 125.) ## DUBIUM VIII. ### OF PURCHASE AND SALE. ### ARTICLE I. #### What is purchase and sale? When is sale a theft? Is it necessary to specify the aforementioned? Does it happen that, according to the law of the city, a contract may be restored? Is writing and delivery required for it? For transferring dominion, is price-payment or faith in that required? To whom do the fruits pertain when the condition of the purchase is fulfilled? To whom do the fruits of the sold thing pertain, but not delivered? Whose possession is the thing purchased if it can belong to a stranger? Is the contract valid if an alien sells the thing? In what cases will the thing increase or decrease in value? What about goods that are not yet usable? Does the seller owe anything in conscience? How many ways may the price vary? And whether things stolen have greater latitude? Whether deception always obliges to restitution? Whether it is better to sell a thing useful to the purchaser for more money? Whether if there are other just titles? Whether extraordinary things can be sold for as much as possible?

Is a common estimation charity a price? And whether a sale takes place under the sword, or through female sellers? 809 What if the thing were sold in very small quantities? 810 Can a thing be sold out of charity because of an extended action? Is it because of risks, or would the thing be worth more? Can a thing be sold on credit as a gift of charity? When is it licit to sell with a pact of repurchase? Is it permissible to make a pact concerning things that are not known, at the discretion of the purchaser? What concerning the contract of mobrata? Of monopolies. How is a monopoly made? Whether those who use or have but little, who correct the price of grain, so as to sell it for charity, commit sin against justice? Whether merchants, being collusive with one another, so as to sell pure goods at an excessive price, should be held to restitution?

And whether in the case of a monopolized commodity, it is permissible for others to sell merchandise at the same price? Is it scandalous to contract the last sheaf once? If the defect be concerning the substance, what then? And if it be sold so that pious tenements are thereby perfected elsewhere? What about wine mixed with water? Is it an injustice to sell something for what it is worth? What if the defect concerns quantity? What if it concerns quality? Is it illicit to sell at a usual price something owed by another through no fault of yours; or something that will soon diminish in value? Can you keep a thing offered to you for sale at a designated price "above the stream"? And is the same to be said of him who buys under a false name? 826 What about tailors who buy bad cloth? 827 If a thing is sold to two parties, to whom does ownership accrue? 828 If the thing perishes before transfer, to whom does the loss fall? What if after the tradition? 829

Is it permissible to acquire a flaw by purchasing chirographs or debts? 830 See elsewhere in Busemb. 793. — “Resp.”

It is a contract by which a price is paid for goods; and the goods are completed by their delivery. Sale against it. His justice consists in this, that the price be just, whether it equates the value of the thing and otherwise. Otherwise, if it is done without a legitimate title, an injustice will be committed, either grave or light according to the excess thereof; and thereby there will be an obligation to restitution in conscience; although in external forum one may not be greatly constrained to restitution except where one has defrauded by more than half.

See Bon. d. 3. q. 2. p. 4. et 4. It must be noted that, for the contract of sale to be valid, there is a requirement for the determination of price; if this is remitted to the purchaser himself, there is no contract, l. That is to say, the laws concerning the contract of sale. Accordingly, if the price is remitted to a third party, according to the last chapter of the same title, either by judgment of prudent men, as rightly says p. 4 n. 4 c. 2 punct. 4 n. 2, they deny that there is any agreement with the common unless the price has already been fixed by law.

And just as with the price, so too (for the contract to be valid) the thing must be determined, at least in intention, so that when this net is sold here, it may be valid. See note 3 (1). Here it is asked, whether when the earnest money has been given, it is permissible for the giver to back out of the contract with the loss of the earnest money? I respond according to P. Concina tom. 7. p. 267. n. 2, that it can licitly be done according to such a custom which regularly is of this kind. It is excluded, unless the arrha has been given for greater security of a contract already initiated.

Whether, however, in a doubt whether the earnest money was given for security, it is licit for the giver to retract? It seems to deny La Croix from Onnate de contrah. t. 2. d. 34. sect. 4., because the nature of this contract is that a pledge be given for securing the obligation not to withdraw from the contract under penalty of losing the pledge. But Concina affirms ibid. And this seems true to me in those contracts where such a custom is regular; for each one is presumed to wish to contract according to custom; since regular contracts are made (1). · 795. — Notandum II. that the contract of sale is perfected by mere consent, unless before the purchase the parties agree to incorporate writing, from §. un. Inst. de oblig. ex cons. et §. Dominum autem rei non transit ad emptorem, nisi facta traditio, ut ex communi: Qui nondum emptori tradidit rem, adhuc ipse dominus est (2). 796. — Immo nec transfertur dominium rei etiam emptori tradita, donec ab emptore pretium solvatur vel offeratur aut saltem praestetur vel

fidejussio aut saltem fides de illo, ex §. Vendita, Inst. de rerum divisione, ubi dicitur: Vendita vero res et tradita non aliter em- ptori acquiruntur, quam si is venditori pretium solverit vel aliud modo ei satisfecerit veluti ex promissore vel pignore dato.

But if he who sold followed the faith of the buyer, it must be said that the thing sold becomes the property of the buyer. The question arises here: whether the debt due for the sale is to be paid to the exchequer at the time of the contract, or at the time of the transfer? Vasq. P. loc. cit. n. 4 dicit tempore traditionis et probabile putant; sed rectè probabilius censent oppositum cum 2. cap. 24. num. 4. Lugo, d. 26, sect. 2, num. 5, et cap. 4, art. 4, v.

Here it is usually sought. Reason, because the contract of sale is perfected by the consent of the soil, as stated in §1. Institutes on obligations through consent, where it is said: Obligations are formed by consent in purchases and rentals. Therefore, in this manner obligation is said to be contracted by consent, because neither (1) Article 1590.

If in a promise of sale an article has been given as earnest money, each contracting party may actually lose it: he who gave the earnest money will lose it, and he who received it will restore double its value. (2) Art. 1588. Perfecta venditio est et dominium transfert in emptorem, quamprimùm conventus est de re et pretio, licet nondum res tradita nec pretium solutum sit. Article 1588. However, if things coming to sale are to be weighed, counted, or measured, the sale cannot properly be called perfect, since the risk of the thing sold still lies with the seller as long as the quantity is not determined by weight, number, or measure; Art. 1586.

Unless these things are sold or bought in bulk. Article 1587. Which are accustomed to be tasted beforehand, such as wine, oil, and similar items, should first be tasted by the purchaser and found satisfactory. (3) Art. 1612. The seller who does not extend the day for payment to the buyer is not bound to hand over the thing sold, if the price is not paid.

Article 1613. Et etiamsi diem solutionis prorogaverit, tamen rem tradere non tenetur, si à die venditionis emptoris fortuna ruinae patere ceperit et ipse non ab emptore caverit. Art. 1654. At the price not paid, the seller can petition for the dissolution of the sale.

Art. 1655. Whenever the seller is in danger of losing his thing and its price, a stay of the sale can immediately be obtained; provided that this danger does not continue to subsist, the judge will extend the day of

solution from things accessory, so that on the expiration of that day and with the price not having been paid, he may declare the rescission of the contract. This writing neither requires presentness at all nor demands anything to be given or done in order for obligation to take hold. 797. — Note III: When a sale is conditional and the condition is fulfilled, the contract is retroactively brought back to the day of the sale; hence the fruits gathered during this interim belong to the purchaser. This, however, is the case when a casual condition is added: frequently, if it be a potestative one, that is, whose fulfillment lies within the power of the buyer. Thus it is stated in point 2, section 2, number 25, 798. — Notandum IV. that danger and advantage regularly pertain to the owner of the thing, but in a concluded sale, upon perfect acquisition, they pertain to the buyer; always so, even if the thing has not been delivered or has been delivered without given security for the price (in which cases the thing remains under the dominion of the seller, as stated above in note 796), unless otherwise agreed (1). Thus from § Cum autem 3. 1.

That which is contained in the seventh book of the Digest concerning perjuries and frauds, and chapter one. After the perfect first code, same title. Nevertheless, receive it if the seller is in delay in delivering; then too the danger pertains to him, according to 1. 17. ff. de periculis et commissis. Moreover, if the fault of the seller has resulted in the destruction or deterioration of the thing sold, according to 1. 2. of the same title.

See Cross 1. 3. p. 2. num. 705. But in a perfect purchase, if there has been no proper agreement, the fruits hanging from the thing purchased pertain to the purchaser, as commonly taught 2a 21 n. 400. preceding chapter 5 number 93. Continuo. Lamentation. 26. section 14.

Cross 1. c. num. 977. with Mol. with Mol. and common. However, it is said by Cont. Turm. with Lugo, insofar as this is valid concerning the estimation which fruits have at the time of purchase: but if the fruits were immature at the time of sale and later became mature, it is certain that, where no fraud has occurred, the increase thereof is due to the seller, according to what is said at Lugo d. 26 n. 242 and Cont. Tourn. loc. cit. (2). Ita quoad fructus pendentes; quoad fructus vero futuros rei, dubitatur 4.

To whom they themselves are directed, whether without transfer of ownership or with transfer of ownership without pledge, (1) Article 1138. The obligation to deliver a thing to be sold is perfected solely by the consent of the parties involved, in such a way that it becomes immediately the risk of the creditor and his peril, unless the debtor has been remiss; if

he has been remiss, then the risk of the thing will fall upon him. Art. 1382. The debtor is released from all obligation if the thing owed perishes without his culpable or blameworthy fault; even if he was in arrears, still he is deemed not to have assumed the risk of a fortuitous event.

Art. 1647. If the thing perishes by reason of an inherent vice, the seller will bear the loss and the price or other expenses incurred in the purchase will be compensated to the buyer: nevertheless, it is not the risk of fortuitous events that belongs to the seller, but to the buyer. (1) "As the risk of the thing regards the buyer, so are its fruits due to him, and civil laws opposed to this point have been condemned by canon law as favorable to usurers, inasmuch as they say." Art. 1614. The thing to be delivered is in the state in which it was at the time of the sale, from that day all fruits thereof belong to the purchaser, either by way of a given promise concerning the price, so that the dominion of the thing has still remained with the seller?

The first opinion, which numbers 4 and Bonaventure in the third question on contracts, part 7, section 1, note 4, following Covino, says that they are to be considered as pertaining to the seller, according to that general rule that things yield their fruit to their owner. The second sentiment, however, is common and more true, which they hold in section 2, chapter 24, note 109. Cross, l. 3., p. 2., num. 978., c. 2., punct. 2., §. 3., n. 17. et 18. cum praec. c. 5., n. 94., cum S. Anton. Arm.

P. The rule enunciated does not prevent that the thing fructify for the Lord; for it is understood in response that this refers to the absolute Lord, and not to the Lord of a thing which belongs to another, concerning which the peril of the thing pertains. Neither does it hinder to say that it appears unjust for the buyer to receive the fruit and the seller not to be able to enjoy the price; for it is replied that this advantage to the buyer is well compensated by the risk of the thing assumed by himself; moreover, the price payable in itself is equal to the price paid, unless the seller suffers some loss on account of the damage arising from delay in payment, or cessation of profit; then indeed the buyer would truly be bound to restore that to him. But since it is certain that if the seller had intended not to have a valid sale until after the price was paid, in that case both the risk of the thing and the advantage of the fruit would pertain to himself. We said before, unless otherwise agreed; for if the thing has not been delivered, or has been delivered without security or on faith of the price, then there is doubt whether the seller can agree that the fruits pertain to him until the price is paid? The first proposition denies with P. Conc. and S. Arm. tractatus 4, ratio 439, who considers it probable. Reason, because by granting an extension for the payment of the price, the seller does not

unjustly demand a yield during this time; yet if the buyer compensates him for the interest at a predetermined time in case of delay in payment.

The second sentiment, however, is more common and more probable in affirmation, and those who hold this are Molina, dissertation 368, note 9. Fillius tractatus tertius octavus quaestio secunda numerus quadringentos sedecim capitulum septimum dubium vigesimum unus nomen trescum. Table 3. Question 2. Page 7. Section 1. Number 5. With Covarr. Gom. and Reb. and the same defends Petrus, tom. 2, p. 393.

Reason, because the seller can justly transfer direct dominion to the buyer and reserve useful dominion for himself, so that he may receive the fruits until the price is paid; and then the fruits are not demanded as a result of the delayed solution, but according to the very sale itself this was established. However, in this case Peter F. C. says well that if the estate perishes or deteriorates, the seller cannot demand what was promised to correspond to the fruits previously agreed upon by the buyer. 799. — It is asked: What thing is purchased with alien money? The response will be given as follows: The purchaser, if he purchases in his own name, according to the law. If from it, concerning the recovery of a thing, where it is said: If from that money, which you had deposited with someone, he has used it to acquire possessions for himself and then transferred them to you against his will... it is an injury to him to have them transferred to you.

Receive, if the money be that of the Church, of a minor or a soldier, as Bonaventure says. Resp. de contrah. c. 2. punct. 3. n. 29. quia tunc illis res acquiritur. 800. — Question 2. an valeat contractus si vendatur res aliena? Resp. ex liceo. An alien rem, 28. ff. de contrahend. empt. validum esse quoad translationem dominii, non quidem rei, sed pretii: unde vendens mala fide acquirit dominium pecuniae, sed tenetur emptori omnia damna restituere; qui autem vendit bona fide, non tenetur ad damna neque ad evictionem, ut dicunt. n. 34 cum aliis, quibus consenti. 33 d. 5 p. 8 § 4 num. 4 sed tenetur tamen pretium restituere emptori etiamsi cum eo convenisset non teneri de evictione, ut exprimitur in l. de action. empt. ubi: Idem esse dicendum, etsi aperte in venditione comprehendatur nihil evictionis nomine præstitum iri, pretium quidem debêri re evictâ.

For it is unjust that the seller should make profit at the expense of the buyer's loss; see Palaim l.c., § 4, n. 2. But it is excused unless expressly agreed otherwise concerning the non-restoration of the price, as . It is excused 2, unless the seller has been made to sell for nothing, inasmuch as he probably gave alms with good faith from his own property or spent it for a jest, according to Excipitur 3: unless the buyer knowingly purchases

an alienated or otherwise obligated thing, then indeed himself cannot avoid punishment for his crime nor recover the price, as is sanctioned in l. If a farm, c. concerning eviction.

See c. n. 46, who subsequently in n. 48 well observed, that from this it does not follow that the price can be retained by the seller in that case, for in the forum of conscience that must be restored to the purchaser, but in the external forum it is to be adjudged to the fisco (4). It pertains here to note something concerning the obligation of eviction. Eviction is due not only in a sale, if the thing is wrested from the purchaser by the law concerning eviction and subsequent enactments (4), but also in exchange, donation to discharge a debt, establishment of dotal property, transaction, division of inheritance, and in any other onerous contract, as clearly demonstrated by 33. d. 5. p. 8. §. 4. Not in a contract involving profit; hence the donor is not bound to eviction, unless perhaps the donation began with a promise of an indeterminate thing, and subsequently he delivers a thing that can be evicted (44). That is why, for the purchaser to be able to act regarding eviction, he is bound to notify the seller of the lawsuit initiated, before the time for probation has elapsed, according to the law.

Buyer, concerning eviction and law. If the thing, ff. The same. By which minors are nevertheless excused through denunciation, and of the Church: c. §. 3. n. 5. et 6.

Upon making the denunciation, the seller is bound to provide the buyer with documents for defense; but he is not bound to defend unless he has promised to do so; . num. 9. et 40. Nevertheless, he is bound to the expenses of the lawsuit, as it is said. If moved, §§ Mota, ff. de evict. et l. Who concerning an absentee, §§ de procurat.

If however the thing is lost through malice or fault of the judge, or through violence of another, or through negligence of the purchaser, the seller is not bound to nothing; for the risk of fortuitous events belongs to the purchaser, as rightly he says, 804. — « 4. That which regards the purchaser, he can purchase it for less than its value, if it is not useful to him, or he purchases it in the grace of the seller, or similar circumstances make it less valuable. It does not hinder that the seller sells cheaply out of necessity; for the sale remains voluntary, says c. n. 21 and 23. It is possible to gravely sin against charity in no way, if ever they are compelled out of extreme poverty to sell their possessions, and they purchase them too cheaply from them. c. n. 40.

It must be noted that goods in the hands of a merchant are estimated to be

worth more on account of his labor and outlays than in the hands of another. Therefore, however, it is illicit to sell another a thing for so much as is sold by the merchant. Ass. l. 2. c. 21. n. 24 punct. 9. §. 2. n. 104. im Notandum 2. quod concursus emptorum, et penuria mercium auget etiam rei; paucitas contra emptorum, et copia mercium minuit etiam. . n. 102. cum communi. P. Concina tom. 7. p. 1. n. 404. de pretio fin. 302. — Notandum 3. quod pretium rei decrescit, quando res est pa-n utilis emptori, et hic in gratiam venditoris emit. It is common Article 1626.

He is bound by every eviction; 1. 1627. Unless the contrary has been stipulated. If with the buyer he has agreed that no thing be delivered under the name of eviction, the seller is tenable to restore the price of the thing, unless the buyer at the time of the sale has known and taken upon himself the risk. Whether stipulation concerning eviction has been made or not made, the purchaser is entitled to petition the seller for the price of the thing; the fruits which the lord evincing title is compelled to release; the expenses of the lawsuit to be restored; the emergent damage and lost profit to be compensated, as well as the costs of contracts incurred. The sentence agrees with the aforementioned reference at n. 403 and 405 in fine, along with others.

Hence it comes about that excessive wages can be lawfully purchased more cheaply than usual, as commonly teach P. Concina, cited number 405 and elsewhere in common, against c. 3, q. 5, r. 4, who says that from the mere fact that a thing is offered to the buyer beyond what the seller has, this alone is not a cause for the price of the thing to decrease, unless some other circumstance be added, namely, either the scarcity of buyers or the plurality of offerers. But rather, others commonly teach otherwise, as we have said, namely that regularly in such excessive sales few buyers are found. There is doubt 4. How much worse is the thing beyond what has been offered.

M. Serra 2. 2. q. 77. art. 4. dub. 3. cum Conrad. et à S. Fausto, et Megala ap. tr. 8. r. 78. sentiunt vilescere usque ad dimidium. But more probable is Cajet. 2. 2. q. 77. art. 4. Bonaventura, d. 3, q. 2, punct. 4, n. 23.

Fillor. tr. 35. c. 4. n. 70. Sporer from the 7th principle number 22. They consider it to diminish only by a third part. There is doubt 2.

Does the same apply when goods are sold on account of poverty? The first opinion affirms it; and they hold this with Article 4. Corrad. Res. cas. p. 4. q. 457.

Good [source], loco citato, concurring with Soto, Sa, in paragraph 78; and yet, a deficiency on the part of the seller does not effect a change in the price. The second opinion, which 405. with P. holds, is indeed more equitable and altogether commendable; but from a rational perspective, the first opinion does not seem unreasonable. Nevertheless, I accept, that the correction of a thing does not pertain to those which are commonly bought and offered, such as grain, oil, wine: but otherwise with regard to others which are not so easily sold. Neither does it matter in that case that the buyer needed that thing, because it would have happened by chance, and the circumstance does not alter the value of things.

But when, on the other hand, one sells under compulsion from necessity, and you did not buy merely for grace, it is easy to sin against charity by buying at so cheap a price as if you had bought merely for grace the thing sold. As Mazzotta says in that place: "Correcting with such a low price as if you had corrected merely for grace." Qui autem venderet in gratiam emptoris, sentio non posse vendere plus pretio suo- premo, nisi concurreret aliqua extraordinaria circumstantia, nempe raritas rei, multitudo emptorum, incommodum venditoris, vel specialis ipsius venditoris affectus ad rem, ut dicemus infra: alias, si adesset tantùm commodum, vel affectus emptoris ad rem, utique non liceret auère pretium, ut dicemus cum S. Notandum 4. quod si tam emptor quàm venditor ignorent pretium rei, tunc justum erit pretium illud quod convenitur, quia uterque tunc ex ponitur periculo jacturae. Thus in cap. 1, art. 4, concl. 1. Note 3. with Note 2.

Question 4: Si quaedam res minoris valeret in uno loco et majoris in alio, potest majoris vendi in loco minoris pretii dummodo venditor assumat in se periculum transyhendi rem ad locum pretii majoris. • 2. The buyer can purchase a lesser thing because he buys many things at once; "for then it releases the seller from many cares and makes him ready for other things to be bought anew," hence justly the price decreases. n. 13. ex c. 24. num, 38. Lugo et al. ap. Salm, de contract. c. 2. p. 14. §. 2. n. 149.) 803.—• 3.

As regards the seller, he commonly ought to sell according to the price taxed by the law or magistracy; and if there is no such price, it will be considered just what is imposed by the moral estimation of men. That which does not consist in an indivisible thing, so as to be anxiously scrupulous about it, but is divided into least, middle, and greatest, or, as others call them, pious, moderate, and rigorous, in such a way that within the breadth of this price selling and buying may be permitted now from the highest, now from the lowest. It must be noted 4th, that the tax imposed by the republic on the price obligates in conscience, as stated by S. Th. I. 2. q. 96. a. 4. ad 3, with the common opinion, even ecclesiastics (although it is probable that other laws do not oblige ecclesiastics), point

9, § 3, n. 148. However, it is understood that unless there are notable changes, as stated in d. 2., n. 145, with Reg. n. 146, and punct. 10., §. 2., n. 135. in fine, or if the year is sterile, as will be subjoined shortly.

Whether, however, at that time the best thing can be sold for less, or mixed with other things, so that it becomes like other common things? They affirm probably . §. 1. n. 428. et 130. P. tr. 306. n. 29. et 3. Reason, because the principal, assessing the price, regards only the value of ordinary merchandise.

Verum tamen possit venderi censuri obligare empor-torem ad solvendum in determinata specie pecuniae? It is probable that it can, they divide. n. 126. But P. Concilium denies, loc. cit., n. 28. I hold it possible to compel payment in money that is usual for such things; namely, copper for goods of little value, and silver for goods of great worth.

It is probable in years that are very unfruitful, not to oblige a tax, as Covarruvias loc. cit. ex n. 132. 604. — Notandum 2., quod pretium variari potest ratione temporis et loci; debet enim attendi tempus in quo res traditur, et locus ubi est res qua venditur, non autem ubi fit contractus nisi conveniat venditor huc rem transferri. punct. 9. §. 2. n. 98. et 99. cum Lugo; Hinc res pretiosa potest parvi emi ubi parvi aestimatur; et res viis magni vendi, ubi magni aestimatur. Vide dicenda n. 808. On the contrary, the seller cannot sell anything for more than it is estimated to be worth at that place, even though he may have purchased it more cheaply and expended much effort in transporting it there, as teach St. Thomas in the cited location, note 400. Note 3. That the price of things of lesser value has a narrower latitude than that of precious things; for wine, or something equivalent to five, can be sold four, or even two, but if it is worth forty, it can be sold forty-two, or eight, as they say in punct. 9, n. 79, at the end; or if it is worth four hundred, it can be sold four hundred and five, or ninety-five, according to 2 c. 24, n. 40, and Concina tom. 7, p. 294, n. 2. But a house or a villa, which perhaps was sold for twenty thousand, might afterwards be bought for forty-two thousand.

See note 80 with note 805.— Notandum quod, licet in foro externo non invalidetur venditio nisi deceptio sit ultra dimidium justi pretii: in foro tamen conscientiae etiam deceptio infra dimidium obligat ad restitutionem. And thus altogether (contrary to certain jurists) it must be said with S. Th. 2-2, q. 77, art. 4, ad 4, c. 24, n. 24. Lugo d. 46. n. 84. et § 4. n. 85. cum communi. And this is even if the contract was concluded in good faith; for then the deceiver is bound at least to that in which he became richer.

Because if, as we noted above with reference to ibid. num. 88, both the buyer and the seller are ignorant of the value of the thing sold, and each commits himself by lot, so that profit or loss accrues to him to whom the lot falls, then the contract is valid, even though deception is discovered midway through, because then they consider themselves mutually to be yielding excess, as rightly stated by AA. cit. Hence also it must be noted that commonly faith is not given to fraudulent sellers, since these are sufficiently known to be common stratagems; whence they themselves regularly are not held bound to restitution on this account, as I have said regularly, namely, if at some time the seller certainly had observed that the buyer believed in frauds and therefore had purchased more expensively, then indeed he is not to be excused from injustice. 806. — « 4. If anything is very useful to the purchaser, it is not permissible to sell this alone under that name for more than just price: because the entire utility belongs to the purchaser, not to the seller. Ex. . 2. c. 27. d. 4. n. 77. That common point, paragraph 9, section 4, number 94, with St. Thomas 2, 2, q. 77, art. 4, who says: If someone is greatly helped by a thing which another has received, but the one who sells does not suffer loss through lacking that thing, he should not sell it at an excessive price.

It is permissible to sell for more than the current price, if there are other good titles for it, and at the same time you advise the buyer: because then no injury is done to him. Such are, for example, loss of profit, or emergent damage, or inconvenience, or trouble to be encountered in the sale of the thing: or a particular affection towards it, as if you had received it from your superiors, from the prince. Item si res sint novae, rares, et singulares; ut videlicet. gr. foreign flowers, birds, beasts, ancient monuments, paintings, numismatic specimens. 3. t. 4. c. 47. §. 4. n. 10.

Therefore, as stated in the aforementioned reference number 15, it is certain that a thing can be sold for more than its worth due to the reason of damage arising or profit ceasing; hence, in question 77, article 1, mode of these matters emptor is warned, as commonly taught above with Busemb. supra, chapter 21, note 26. Lugo dated 26. section 7. number 89. and number 89. with Bon. Soto, etc. And this even if the price be fixed according to the principle; because the tax regards the thing itself only insofar as . c. cum concl. 4. v. Here these two are, and Bann. along with c. at the end, because then himself the seller would be the cause of such damage, not already the buyer.

But the opposite seems more probable to me, according to what is said about usury in number seventy-six. And moreover, in the footnote. Reason, because by accepting the contract, the buyer himself becomes the true cause of the vendor's loss. It is asked I.

Now, however, on account of the special affection which the seller has toward the thing sold, can he sell it for more? Tapia denies it, n. 90, because for this reason the thing is not esteemed more valuable, since that does not confer any benefit upon the purchaser. But commonly and more truly do they affirm [it], the Decretals with Bonaventure and Maldonatus. Reason, because the deprivation of a thing in regard to which one has a special affection is truly estimable in price.

If, however, the reason of Tapiæ were valid, even apart from damage or loss of profit, the thing could be sold for more than its worth, because neither of these brings any advantage to the purchaser. 808. — Question II. Whether things which are not necessary for a common sufficiency, such as extraordinary gems, precious horses, indicator birds, singular paintings, and similar items, can be sold for as much as possible? The same question is asked regarding singing, dancing, and the abuse of a woman? They affirm, Diana, page 4, tract 8, restoration 56, with Sot.

Serra, Valentinus de contractibus, caput 2, punctum 9, sectionis 4, nota 92, rightly call probable. The reason is, because when a thing does not have a price nor a legitimate one, that is to say, neither according to the law nor according to common estimation of men, that which is agreed upon is thought just. But I think it is more probable to deny this, as Lugo holds on day 26, note 47, dubium 3, conclusion 4, verse v. You will again inquire about this, n. 93. Yet I nevertheless except from these the honorable use of a woman, which being inestimable in price can nevertheless receive that for which she is most worthy without injustice.

But it must be noted 4. that with this . n. 94. as with Lugo d. 26. n. 45. num. 43. with Dicast. 2. c. de resc. vend. at present there is no fraud, and the price is not set by law. Reason why then public authority approves that as a just price which is publicly attested by the concourse of purchasers. The same applies to the revenues from benefices, commendations, etc., which are placed under the spear; for then, if buyers concur, the matter becomes more estimable; but if they do not concur, it becomes less so. And it does not seem to be sufficiently probatively contradicted by the advocate on p. 349, who strenuously endeavors to prove that if the thing is adjudged to the offerer for a notably lesser price, he should himself equate it with the legitimate price.

Nam si hoc esset, dico quod casu quo emptor in licitatione offerret ultra pretium supremum, teneretur dominus rei excessum restituere; et hinc sequeretur, quod res non posset adjudicari ultimo offerenti, si primus afferens jam supremum pretium obtulisset; sed hoc nemo dicet. Therefore,

if the thing is adjudicated to the offerer beyond the supreme price, this certainly happens because the laws decree that to be the just price of the thing. Therefore, if the master can retain the excess, even the buyer can hold onto the thing for a price less than the lowest bought. We have said, provided fraud be absent; which may intervene either on the part of the seller, namely, if there be a hidden and sudden defect in the thing sold, or if he introduce false witnesses; or on the part of the buyer, if by deceit, fear, or importunate entreaties he hinder others from offering more.

For thus they sin and are bound to restitution until a just price is reached; so commonly is it held. You inquire finally, Lugdunensis, day 26, number 45, tract 4, reason 47 and point 5, number 58, and in the same place point 9, section 4, note 96, along with others frequently. They also correctly teach regarding a xenelis or other things which have been sold at a time when they know few buyers are to be expected in the future, so that the thing may be adjudged to their friends. But a doubt arises, whether, when the thing is exposed for sale, the purchaser can ask others (notwithstanding this, with importunate prayers), that they do not offer more, so that he himself may obtain the thing at the lowest price?

P. Megala negat 2. 2. l. 2. c. 6. q. 5. n. 146., cui adhaeret Cabass. Because, while others were prepared to offer more, the seller is hindered from obtaining a higher price. And to this opinion it is favorable . 2. c. 21. n. 147. v. I say in the third place where he says: In a similar manner purchasers sin against justice when they conspire or ask others that something not be allowed to be sold at its just price but at a lesser one, because (note) sellers have a right to a higher price.

They commonly affirm, however, fourthly in the end. Lugo, day 26, number 45, treatise 8, rubric 76, with Villal. Reg. Vega, Corrad. et P. 58. cum .

Cover and Day. Built (as they say), because, in this case, a purchaser lawfully uses with diligence so that he may consult for himself. Doubt 2 arises: whether it is permissible for the buyer to contract with others in a legitimate manner so as not to offer more than they? It seems that Diana says in her response to res. 76, along with the other cited authorities, firmly affirming it, by quoting the words of Peter chapter 3, section 2, note 4 and 85: who thus expresses himself: For not whatever grain a merchant sells according to my judgment is unjust if bought only at a certain price, unless that be just.

And the same applies if one solicits friends in a public auction not to bid more, so that he himself may have the thing at just a price (though the

lowest or moderate one), according to that forum; for by this means he uses cunning, and the thing will be given at just a price, fearing a great increase in expense when buying. But to me and to other less experienced scholars it seems that the opposite is said, at least in a case where the matter is brought before the judgment for reduction. Reason, because then the lord of the thing is entirely bound to deliver more than is due; hence he incurs an injury from the buyer if by offering only a low price or a moderate one he impedes the seller in obtaining his rightful price, namely that it not be hindered by him in obtaining. Therefore such a seller is constituted as being in danger of delivering the thing for a small price, if no other buyer can be found who offers more; just so has the right to be drawn with hope of obtaining a greater price, if several buyers intervene, who are spurred on by emulation and increase the price: for this seems to be required both by the nature of bidding, that equality be preserved. And the same seems to be held by d. 26, n. 45, at the end, where it is permitted to allow someone to ask, yet not to enter into a contract with them. 19. — « 6.

He who sells things of small value and in small quantity sometimes sells them dearer than he who sells in large quantity, because he incurs greater labors, expenses, etc., to conserve those; and thus tavern-keepers and innkeepers excuse themselves for selling hay, barley, etc., more dearly than others do, provided that no tax be imposed on the purchases. Salas. . 45. a. 44. It is composed: according to . 44 c. 2 punct. 44 § 2 a 149 around the end with the cited location n. 38 and Lugo. 1 — « 7. It is not permissible to sell more dearly on account of a delayed payment, nor to buy more cheaply on account of an anticipated payment: because in the sale, which takes place by credit, or in the anticipated payment, there is virtual money; hence usury if anything above the due amount is demanded.

Understand this: if another title intervenes from among those previously enumerated regarding usury, either the price will increase, for instance due to the frequency of purchases, etc.; hence, it is not permissible to sell more dearly on account of a delayed solution, or to buy more cheaply on account of an anticipated solution, because of the damage arising or profit ceasing, provided that the purchaser is warned about this. However, § 4, n. 144, in med., with Bann. and Villal., do not excuse those who have such a great abundance of goods that they need to sell part of them on credit; or those who have an excessive abundance of money so as always to keep something in deposit (But see the aforementioned at § 774.). They rightly note, moreover, that it rarely happens that purchasers incur this loss of profit, because if they sold with numerated money such great quantities of goods would not be taken away from them, and thus they would already

gain by means of credit what they would gain by means of numerated money. From which they say that it is sufficient for them to sell at a high credit price what they would otherwise sell at an extremely low price, but not for more. On account of the risk involved in demanding payment, even at a lower price, a thing can be lawfully sold on credit, in the same manner as was stated above regarding usury, n. 766.

But in the sale it is certain that warning must be given to the purchaser concerning these titles, as when Serra said. It is certain that a thing can be sold more cheaply if the price to be delivered is at a time when the thing will be worth more; provided that from the seller until that time the thing be kept; just as conversely it can be bought more cheaply if the thing is to be delivered at a time when it will be worth less. And 147. 814. — It is asked whether, according to the custom of any other place, it is permissible to sell a thing for more than its cash value in credit, as would be done with counted money. The first opinion denies this, and those who hold it are numbered n. 82- item etc. ap. . 14. c. 2. punct. 14. §. 2. n. 150. because whatever is demanded on account of delayed payment is usury. The second sentiment, however, is probable, which those maintain . 2. c. 21. dub. 6. n. 56.

Lugo, on the 26th day, section 7, paragraph 2, note 107, with Mol. Cano, in the seventh precedent, n. 24 and n. 151, with Soto: It does not hinder that buyers be constrained to buy thus out of their necessity; for this happens by chance; however, it is verified that in such a case the multiplicity of buyers concur, which renders the augmented estimate just. All the more, because in the multitude of buyers it is impossible not to be exposed to some risk of losing the price. It is likewise no good saying that then it would be not the multitude of buyers but this manner of buying which would augment the price; for this manner is usurious; for it is answered that indeed not the manner gives title to augmenting the price, but the multitude of others buying in such a manner, even though the multitude arises from such a manner.

From these words it is equally probable that it be lawful to purchase a cheap thing with counted money for an anticipated solution, if such a custom exists somewhere. Reason, because then few are the buyers who purchase by anticipatory solution; and on the contrary many are the sellers selling in such a manner, from which arises that goods themselves increase in value. Ita n. 64. Lugo d. 26. n. 120. cum Mol. . item . n. 153. et 154. cum etc. contra sed in tempore traditionis non habetur haec supposita paucitas emptorum.

For it is replied that the contracts of purchase are not perfected at the time

of the tradition, as Habert supposes; but at the time of the initiation of the contract, although the dominion over the thing is not transferred unless after the tradition, according to what is stated in n. 795. Whether, however, the writings of minors can be purchased on account of an anticipated solution? See below n. 829. 812. — « 8. It is lawful to sell a thing with a pact of repurchase, that is, so that the buyer be held obligated to resell it to you at a stated time, or whenever you wish; provided that a true and not fictitious purchase takes place, and that no veiled usury intervenes.

Mol. d. 375. . 14. etc. Qui addunt, juxta estimationem illius operis ac pacti pretium esse imminuendum. See C. Lugo d. 26. n. 489. (4). Plures conditiones requiruntur ut venditio cum pacto retrovendendi sit justa: I. That the price may be diminished according to the burden estimated, which thus is imposed upon the purchaser. Hence the price of the thing sold with a contract to repurchase is said by some to decrease even to one-fourth, others to one-third, while still others leave it at the discretion of the prudent ones, as stated in point 6, n. 59, and note 67, which decrees that it should decrease even to the minimum price, not beyond: but this is rather improbable, for it cannot truly be called a decrement, since the purchaser has the right to the minimum price, even without such a contract.

II. Condition is that one appose a pact by which more or less will be retro-sold; but it is licit to make a pact by which it will be retro-sold at the same price, even though the thing sold for a different price, as . 2. c. 21. dub. 14. n. 445. Good and learned [author] number 64. Hence a lesser amount is bought, because the seller has the liberty to sell the thing at a higher price when its value is augmented, even though it is sold for the same price.

III. Condition must not be imposed such that the risk of the sold thing lies with the seller by itself; rather it regards the buyer, unless the price is increased according to Article 1600. The faculty of redeeming beyond five years may not be extended. 1661. Even the judge himself will not be able to prolong this time period. 1662.

If within that time-space the seller shall not have claimed the thing, then the buyer ipso jure and his servant have escaped. 1663. That interval likewise obtains for minors. 1664. The seller, by reason of a pactum redimendi, has the action against another purchaser also, even though such right was not expressly contained in the second contract. 1673. Wishing to redeem, the seller shall restore the price of the thing sold, the expenses incurred in the act of selling, as well as any necessary

expenditures by which the value of the thing has increased; proportionate to the increment thereof; otherwise having fulfilled this, he is prohibited from obtaining possession of the goods.

Edit. 52i Lib. 4. Treatise 5. Of the estimation of the seventh precept of the Decalogue. peril. Ita. n. 65.

See n. 842. and 849. IV. Conditionally, as it is transmitted vacantly or with fruits. It is, however, probable that on account of the pact of retrovendition the seller has an action in rem even if the buyer has sold it to another. See and n. 66.

If in the sale a gentile retract or pact is appended, such that a consanguineous proximus of the vendor has the right to recover the thing within a certain time, he will not be able to re-immerse the thing and transfer it to others; for this retract was instituted only so that goods might be preserved in the family; see Quar. 3, p. 290, n. 7; prae. c. 5, n. 400; and Cabass. l. 6, c. 9, n. 41, with others, ibidem. Dudium 14. c. de contractu emptoris. If however he wishes to sell the thing, he is bound to notify the consanguineous relatives; who if within two months they do not wish to buy it, he can then sell it to anyone else; thus DD., ibid., commonly, according to the law. When however a thing is sold to one who has no right of consanguinity, this person may reclaim the thing within a year and a day; thus DD., ibid., commonly, according to the law. Feudorum apud 843. — Estne licitum pactum reiemendi ad arbitrium emptoris?

The first opinion denies it, which Habert holds in tractatus 4, pagella 267. Continuum capitulum quartum articulus septimus sacramentum quartum punctu quarto conclavi secundo. Reason, because although such a contract is made under the name of sale, yet in reality it does not seem that anything is sold, but rather given as security, so that the purchaser may receive fruits from his own money, which he can recover at his own will. They follow the same opinion as 64, namely, that if a piece of land is sold for a cheaper price than its initial valuation, according to the hope of fruits to be perceived within a certain time designated.

The second common sentiment affirms this, and they hold thus: 2. c. 24. dub. 14. num. 443. Lugo, dated the 26th, number 200. Mol. d. 377. d. 5. p. 31. §. 4. . prae. e. 5. n. 404. . q. 2. art. 3. n. 42. p. 424. Bon. d. 3. q. 3. p. 3. cum Cov.

Axor, Fill. et Garcia; item P., n. 60. I consider this to be certainly more probable according to that opinion, provided nevertheless these

conditions: I. That there may be a true intention of amendment and selling, but not of feigning. II.

That the buyer pay a higher price, according to the estimation of this burden which it imposes on the seller, so that when the thing itself pleases the purchaser, he may have it remedied; in which all agree. This however is a burden which some think to be among those at III. That the seller may not be obligated to re-sell at a greater price than he has received, as it is taught that whatever is subsequently given can be excused by common usage and estimation of men, which I find very displeasing. Hence I hold that in such a contract it is not possible to obligate the seller to bind the buyer except for the purpose of paying only the price, according to the value of the thing at the time of the sale; and if the thing has deteriorated, according to its value at the time of repurchase (4); for the excess over a just price given to the seller is entirely directed towards that which is imposed upon him as a burden to repurchase at the discretion of the buyer.

Cum conditionibus servatis, nequaquam illicitum mihi videtur praefatum pactum reemendi: sicut enim licitum est pactum retrovendendi in beneficium venditoris cum diminutione pretii, sic contra cum pretii augmento licitum dici debet pactum reemendi in beneficium emptoris, cum ita gravamina utrinque compensentur. Neither let it be said that this is a virtual loan, since it is a true purchase and sale, differing in nature from the nature of a loan; for in a loan, the thing pledged perishes to the borrower, but here, if the thing perish, it perishes to the purchaser, or it is deteriorated. Note here forbidden is the contract mohatra, namely when someone buys from you merchandise at a higher credit price, with either an explicit or implicit pact that it will be resold to you at a lower price for counted money. Here is the proposition 40. censure from Innocent.

XI. A contract of mohatra is licit even with respect to the same person, and with a contract of retrovendition previously initiated with the intention of gain. Reason, because it is evident that usury can be disguised. Otherwise, if a thing is retroactively repurchased without any previous agreement, even at a very low price, a contract of sale with him himself is licit, provided that the intention of usury does not exist.

Thus. 2. c. 21. dub. 46. n. 130. Question 2. at fin. p. 7. n. 70. cum . Luyo adds moreover, in his work of the 26th day, note 208: it is not illicit for the seller to sell goods if the creditor sells them and says to the buyer: If you wish to sell them at a defective price with counted money, I am ready to buy them. Literally speaking, this does not seem illicit, but in practice I think it is extremely difficult for a seller to lack the intention of usury.

844. — « 9.

Monopoly, id est, quando unus vel plures hoc efficiunt ut ipsi soli aliquid vendant; vel quando mercatores conspirant, non minorem vendere, non sunt contra justitiam; modo non conspirent ultra justum pretium vendere. Ita contra Rebell. See Card. Lugo dated 26th [day] of the section 43rd.

It is permissible for princes or magistrates, when such a privilege is granted to one or a few, that they alone may sell something; and also to tax them in price, and thus provide, so that the subjects are not burdened. See d. 20. Cardinal. Lugo l.c. et d. 48., ubi rectè notat ex gr. bi- » biolpolis, ut nemo alius talem librum vendat, vel ut tantum sit unus, » aut duo 'tabernarii in aliquo loco; nihilominus quando unus, vel » pauci propria auctoritate ea constituunt, v.g. emendo merces certi » generis, ut frumentum, vinum, oleum, etc., ut ipsi deinde arbitru » suo vendant carius, peccare semper etiam contra justitiam cum obli- » gatione restituendi.

» 845. — Monopolium idem sonat ac venditio unius, nam monopol a sonat unicus venditor. Four therefore are the modes in which a monopoly can occur: I. If the prince grants someone a privilege to be the sole seller of a certain type of merchandise; and this is certainly legitimate. II. Si princeps alicui concedat privilegium ut solus emerat quoddam genus mercium; et hoc certè licitum est.

If the merchant hinders, so that other goods do not arrive, in order that he may himself sell his own goods with damage to the public treasury; this is certainly illicit, and he is bound to restore the damage. And the same must be said of him who spreads false knowledge, saying that ships are submerged or similar lies. III. If one or a few purchase all goods in order to then sell as much as possible.

IV. If the sellers conspire among themselves regarding the price, so that they do not sell for less. But concerning these two modes, mentioned in this final place, there are two great questions agitated. 846. — Question NoneI.

Whether one or a few merchants, who at the time of harvest or vintage buy all the wheat or wine at a cheap price then current, and later sell it more dearly, would sin against justice? It is certain that it is licit to purchase goods which are not necessary for the sustenance of life, or for the common state of the republic, such as precious gems, noble horses, women's ornaments, and similar items. It is certain that it is licit to buy wheat, wine, etc., so that they may later be sold at a common price of the

republic, by which other merchants might carry them off from afar, or so that they may be sold to citizens with moderate profit after the citizens have already purchased for themselves their necessities and conveniences. Thus Bonac. d. 3. q. 2. p. 2. n. 3. punct. 4. §. 2. num. 45. teaches as follows: According to S. T. 1. c. 23. §. 45., where it is said: It is licit for the merchant to purchase those grain supplies at a time of harvest when they will later be sold at higher prices, so that thereby he may gain an honest profit through his own labor.

The question therefore is whether those who buy all these necessary goods for sustenance, in order later to sell them at a higher price according to their own fancy, are bound to make restitution? The first opinion denies this, and this is held [by them]. 2. c. 24. n. 451. et Mol. d. 145. in fin. Reason, because such buyers, although they sin against legal justice, nevertheless do not injure commutative justice when they purchase at current price; otherwise, as they say, even purchasers who by competing would induce charity would also themselves be the cause that the price would be increased. This opinion, however, seems to me very little probable, because the constitution of price does not depend on the private arbitrium of sellers, but on the common estimation of citizens; nor is parity hindered by the adductio emptorum concurrentium, for then an auction of price would happen by accident; whereas here the price is increased solely out of the will of sellers.

Wherefore rightly Saint Augustine, loc. cit., thus taught: If he buys a crop of the season and merely collects it, so that afterwards men are compelled to buy from him at their pleasure, and thereby sells what he wishes, he grievously sins against his neighbor and the community. Therefore, the second opinion is common and true, which Sotus holds in lib. 6. de just. qu. 2. art. 2. Sylvest. v. Purchase, q. 10, 3, 2, art. 4.

Croix l. 3. p. 2. n. 946. n. 44. teaches that these buyers are to be held responsible for the restoration of damage by the arbitrium prudentis for celestial buyers, and if in the republic they sell goods at a higher price than according to the market estimation, provided they themselves did not create a monopoly. Reason, because these are the cause that the price is unjustly increased. The same opinion is followed by Lugo, d. 26, n. 176; nevertheless, let it be noted that if the price be increased above the highest price at which the goods would have been sold, had a monopoly not been made. Moreover, they judge it probable that Lugo holds this in n. 177.

Bonaventurae dictionis tertii quaestio secunda partis quinta capituli octavi numerus ducenti quadraginta quintus caput quarto numerus octo. Cross l. c. n. 946. et apud Lugo d. n. 177. Ban. Et si unum est huiusmodi venditor

qui mercem illam congregaverit, peccet tunc saltem contra charitatem?

More affirm this, but deny it n. 805. and Lugo d. 26. n. 178. with Mol. et n. 168. now other ones do not induce to sell more cheaply; for otherwise no one is bound to neglect his own advantage in order to avoid the harm of another, when he is not bound to avert it. 817. — Question NoneII. Whether merchants conspiring with one another to sell goods at a more advantageous price are bound to make restitution? It is certain that young men are bound to restore if they agree to sell at a price exceeding the highest; just as artisans and similar persons who agree with one another not to place their works for hire except at a price exceeding the highest transgress against justice, according to 2. c. 21. num. 147. punct. 5. n. 58. and others commonly.

The question therefore is, when a conspiracy is formed so that goods are not sold unless at the highest price, whether there is a violation of justice? The first opinion affirms what those maintain. 3. part. 4. cap. 18. no. 43. Sot. l. 6. q. 2. art. 3. 2. prae. c. 5. n. 103. q. 2. r. 3. et ibid. n. 55. The reason is, firstly because by law one chapter on Monopolies this is gravely prohibited with deprivation of all goods and perpetual exile; secondly because such merchants compel others to buy at that supreme price through an unfair medium.

The second opinion, however, states that these do not sin against justice and are excused. 2 c. 21 n. 145. Lugdunensis d. 26. n. 172. et 173. qu. 2. art. 4. n. 2. (qui vocat communem) c. 8. n. 232. n. 805. 8. c. 3. §. 42. n. 44. cum loco citato n. 56. cum et probabilem vocat. c. num. 42. cum P.; sed haec secunda non minus probabilis videtur, et forte probabilior, tum auctoritate DD. tum ratione; quia non aptè dicitur, quod venditores convenientes vendere pretio summo cogant alios ad sic emendum, cùm isti voluntariè emant; si coguntur, non coguntur à venditoribus, sed a propria necessitate, quae non potest dici vera coactio ex parte venditorum emanans. Therefore rightly speaking, it should be said that purchasers are rather impeded from buying at a lesser price by such a convention. Cum autem sic impediuntur, non irrogatur eis injuria, nisi impediantur minis vel mendaciis, sicut accidit in omni alio contractu; aliter etiamsi aliquis tantùm suaderet venditori ut venderet pretio summo, etiam peccaret contra justitiam, et teneretur ad restitutionem; quod iidem contrarii negant.

This reason is taken from the general rule, as we said in no. 582 and 584. Just as no injury is inflicted upon another person if you prevent him from leaving an inheritance that is not due to him, even though the testator was determined to leave it to him; so too in our case. Although such a

convention is illicit because it is prohibited by positive law, it is nevertheless not injurious according to natural law. Nor is it valid to say that the very contract between the seller and buyer, when they mutually obligate themselves not to sell except for a high price, would compel purchasers to buy in such a manner; for it can be responded that this agreement, since it is freely entered into, neither contains force nor fraud.

It is responded that such a contract, being illicit and contrary to charity, as we shall say below, cannot induce any obligation according to the Rule. Jur. 69. in 6. ubi: In matters of bad promises, it is not expedient to observe faith: according to what was said at no. 742. Hence, given the probability of this secondary opinion, it is more probable that these sellers are not bound to restitution as we have said above in no. 669. It is not doubted that in such a case the judge can reduce the supreme price to the medium, according to Lugo n. 477.

Nor is it to be doubted that the aforementioned sellers would gravely sin against charity by conspiring in this manner, as teaches number 145.56 and Lugo n. 475 with Molina and the common opinion, from which Lugo says one should not deviate, à qua ait Lugo non recedendum. Reason, because although charity does not oblige you to sell below the supreme price, it seems nevertheless to oblige you not to dissuade others from doing so, lest they sell at a more moderate price: just as, if charity does not oblige you to give alms, it seems nevertheless to oblige you not to dissuade others who wish to do so. But here another doubt arises: whether it is permissible for others to sell goods at the same unjust price after a monopoly has been factually established by merchants. They deny it, Tapia, point 5, no. 57, because that price is unjust.

But the Salamanticensians affirm it, along with Bonac. and Medina, and Diana. Reason, because that price is now common and current; and by accident it stands, having been derived from the injustice of others. The first judgment seems to me altogether better, for I understand that the price is always beyond the supreme. Reason, because that price, which has been acquired through injustice, is always and by itself unjust, and must be reduced to justice.

That estimation, however, is by no means to be called just, which is found to be unjust and has arisen from injustice; rather it ought not to be called an estimation at all, but rather a deception and fraud. Thus rightly the Council of 848 — "40. The seller ought to warn the buyer about a notable defect in the thing sold, which might be present, for instance, if the horse is mad, the house ruinous, the sheep diseased, the cloth burned, etc.; otherwise he is held guilty of fraud and consequent damage: at least if

there has been a defect either in substance or quantity, for example, if it falls short in weight or measure, or if he sells one thing instead of another; and thus he sins mortally with an obligation to restore. 4. If the seller places grain beforehand in a damp place so that it swells. 2. He who mixes Rhinish wine with French. 3.

Who sells bullock's flesh for kid's flesh, etc. See t. 8. r. 51. » . 14. When however the seller may justly remain silent regarding defects of the kind of thing being sold without obligation to refund the price or to rescind the contract; see Card. Lugo d. 26., sect. 8., n. 428., et d. 41., ubi notat venditionem factam ab ignorante vitium rei esse validam: rescindendam tamen, vel reducendam ad aquitatem, nisi venditor contra hoc exceperit (1). Triplex igitur potest esse in re vendenda: I.

Regarding the substance, as if tin were sold for silver. II. De rebus aliis circa formam, ut si vendatur stannum pro argento. Regarding the quantity, if 5 modia are given for 10. III.

Regarding quality, as when corrupt wine or burnt cloth is sold. 849. — And I. if the defect was concerning the substance, certainly the contract is null, and the seller is bound either to rescind the contract (if the other party, aware of the defect, would not have purchased it), or at least to make good the excess price. On the contrary, if the buyer purchases a gemstone for the price of glass, he is bound to make up the difference in price, at least the minimum amount, unless himself he committed deceit. . 14. c. 2. punct. 12. §. 2. n. 474. Receive it, if both shall commit themselves by lot for the sake of ignorance regarding value, as we said in no. 802, v. Note 4. (1) Art. 1841.

The seller is bound by vices of hidden defect, which render the thing unfit for the use to which it is destined, or so diminish it, that either it would not have been purchased, or only at a lesser price. Article 1841. The seller is not bound by manifest defects. Art. 1843.

The seller is bound by a hidden defect, even if he did not know it, unless otherwise agreed upon. Art. 1844. In utroque casu (art. 1841 et art. 1843) emptori optio datur inter rescissionem et indemnitatem. Art. 1845.

If the seller knows the defect, he is bound, besides the restoration of the price, for all damages. Art. 1846. If he was unaware, he is bound only for the expenses caused by the sale. Edit.

But here there is doubt 4., whether it is licit for someone knowingly to

purchase silver from an ignorant seller, asking him to coin it, so that it may be worth more? Absolutely to be denied against some, because such a donation, when it proceeds from ignorance, is none. Thus it is said in Tractatus 8, Caput 3, Quaestio 7, Secunda Pars, Decretum 11, Numerus 39, with Salas, and Note 172. Item, si venditor ob ignorantiam rem venderet infimo pretio, etiamsi venditor non interrogaret emptorem de rei valore (nam, si interroget, certè tenetur emptor valorem manifestare).

Thus . Lugo, dated 26th day, note number 437, and canon number 38, at the end. Reason, because at that time the seller easily accepts a low price out of ignorance. It receives.

But I do not know to assent to this opinion. I do not deny that, by reason of that donation, one cannot properly retain the purchaser, because it is not a true donation, whatever Cajetan may say; and I do not know why such contracts should not be valid as true sales? From one side indeed the buyer justly buys, paying the lowest price; from another I cannot understand how he himself can have an obligation to inquire of the seller (whether the seller asks or does not ask) about the value of the thing when in no way he positively deceives him or compels him to sell: but that the seller accidentally knows that price to be the lowest, is his own fault and should be imputed to him. But if however a mixed thing is sold as pure, when truly it is a better thing for others and after mixing with others is not worse, it can probably be sold without manifest defect at a common price. § 1. n. 429. 2. c. 21. dub. 41. n. 83. and agrees P. n. 30. with the nearly general opinion as he asserts; namely, that when mixed, the merchandise truly corresponds to others which are commonly sold. But there is doubt, namely, whether the same can be said of mixed wine with water?

They deny it, but they are deceived by serious doctors, this to be admitted, as seriously admitted, n. 83, with Lop. and others, as infra. And it sufficiently appears probable, unless from the mixture the wine kindled, or could not be preserved by the purchaser, who bought it with the intention of preserving it, as they say, c. n. 27. Serra 2. 2. q. 77. a. 2. cum Soto et Corrado: saltem in hoc non videtur esse gravis injustitia. This is confirmed by St. Anthony, who says: When some people adulterate what they sell so as to protect themselves from loss and gain a reasonable profit, since if they sold pure goods, buyers would not give just payment, because others sell similar mixtures at a lesser price; it seems that they could be accused of this, provided that the mixtures do not harm the bodies in those things which are sold for food and drink, especially in medicinal substances.

P. 2. tit. 1. c. 17. §. 4. This is also confirmed by St. Thomas, who says: When the use of an item does not belong to the seller, it can nevertheless

be suitable for others; and if he himself, on account of such a defect, deducts what is necessary from the price, he is not bound to make manifest the defect. They probably deny that n. 74 punishes. 12. 5. 2 n. 174 with Lugo, l. 6 n. 9, except where a just price is demanded for the thing delivered. Reason, because then there is not a substantial diversity as regards the end of the buyer.

However, it rightly warned. 822. — II. If the defect is concerning the quantity, it is inquired whether he who uses a measure diminished so as to obtain a just price is excused, otherwise not obtaining it because of an unjust tax, or by reason of an unlawful monopoly imposed? Very probably Lugo affirms this on the 26th day, note 125., section 3, part 5, treatise 4, chapter 17, section 2, number 15. Pat. d. 5. p. 22. n: 5. . prae. e. 5. n. 76. cum Sot. ibid. n. 175. cum 823. — III.

If indeed the defect is concerning the quality, when it is manifest in itself, the seller is not bound to manifest that, as S. Thom. 2. 2. q. 77. art. 3. with the common opinion. They note well however, with Lugo, that if the ignorance of the buyer is known to the seller, then in conscience it is incumbent upon him either to manifest the vice or to compensate for the damage; although otherwise (as he says, n. 19, with Les and Mol) the contract is valid; unless, as is excused, according to 4. e. 17. n. 33., the thing remains intact. It is also received, si qualitas transierit in substantium, patà, si emptor expressè dixerit, solo vinem, si non est velus. cum quod venditor dolo decipiens emptorem circa qualitatem, si res æquè illi non sit, vel ferè æquè utilis, tenetur vel contractam rescindere, vel damnum resarcire ad arbitriam emptoris; et idem dicit Habert t. 4 p. 284 qu. 3. Cum autem re sit occulte et nocive emptori, ut si furiosus æquè vel domus ruinosa recte dicet hic n. 3., teneri ex justitia venditorem de vitio monere.

It is also noted, 2nd article, 5th number, 3rd: another sale is null; but if he inquire generally, then, if the thing is useful to the purpose of the buyer, the sale is valid. Then he notes § 14, n. 29: that if the vendor protests, saying that he will not give a reason for any defect but will sell as is commonly said: A sacro d'osa rote (1); then he is bound to nothing. Wherefore Tambur justly approves the custom which prevails in certain places, especially in large markets, according to which animals are sold even though they have extremely hidden defects. Reason, because for removing disputes for the common good this custom can sufficiently be justified: provided that the thing not be sold for more than just price, at least the highest price it is worth, according to the measure of that hidden defect. 824. — « 41.

If you know secretly that your debtor is not to be paid, it seems unjust, to those who do not know this, to sell that debt for a usual price; firstly because it involves deceit, and secondly because the intrinsic vice of the credit is not revealed. Good. Ibid., loc. cit., lib. 4, cap. 40, disp. 40. Fillius, etc. « 42. Even though the seller knows that the price of the merchandise will soon be reduced, it is permissible to sell at the current price and not tell the buyer (provided, however, that this is not done through deceit, frauds, and lies by which to allure the buyer to purchase; for a simply current price is still just); p. 5, n. 42, from Az. et Fill. etc. But there is doubt about this among the Doctors.

For others indeed, in order that . Gab. etc. deny that it is possible to sell an item at its current price when it is known that it will soon be worth less, because then that item is worth less due to such circumstances: and this correctly. 14. c. 2. p. 9. §. 2. n. 107. with note 40. conclusion 2. v. Question 2. n. 408. cum Sot. . Th. qui 2. 2. q. 77. art. 3. ad 4. expressè hoc docet, inquiens: Venditor, qui vendit rem secundùm pretium quod invenit, non videtur contra justitiam facere, si quod futurum est non exponat. Reason, because the future value should not be considered, but the present value, which does not vary according to particular knowledge, but according to common estimation: and I consider this judgment more true if there is indeed particular knowledge, but not if it is common knowledge.

Thus likewise in opposition, well do P. Mald. say that it is permissible for each to buy goods at current price, knowing that the price will soon be increased, although the sellers are unaware of this, as is proven by the example; and it should always be understood with modò, provided no lies, force, or fraud be present. Whether, however, in that case either the buyer or the seller would sin against charity by selling that thing to someone with so great a harm to him? Resp. Sic pariter contrà, benè ajunt P. Mald., et licère cuique emere merces pretio currenti, scienti pretium brevl augendum, quamvis hoc ignorent venditores, ut probatur exemplo Item dicendum cum modò, semper intellige, absint mendacia, vis, aut fraus. St. Thomas in the same place states that a greater abundance of virtue is present if the price be diminished.

But if it does not diminish, it regularly does not constitute a sin, as they say and , because thus he consults for his affairs, even though an accidental damage befalls another. It is certain that one is not bound to manifest a thing with his own loss, as it is stated in c. 5, q. 6, restit. 2, and elsewhere. The reason is because, on one hand, he does not harm charity by using his right justly to consult about his affairs, even though another may accidentally suffer damage thereby; on the other hand, he is not bound to manifest that with his own inconvenience, as they say in c. 24, n.

40, and the same at the end with Sot. Good. It has been regularly stated, namely, that if by such a sale the purchaser were reduced to extreme or grave necessity; just as charity commands us to assist a gravely indigent neighbor, so it forbids us from bringing ourselves into poverty in order to acquire riches for ourselves.

It is objected 2ndly; namely, that unless this same quantity at the same price he would still have been about to purchase from others: but canonically they consider this objection as regularly not valid. It is objected 3rd: Even if he could sell to someone who would immediately resell it to others consuming it, and then sell again something preserving it until the time of price diminution. But in all these cases the seller would always gravely offend charity, I doubt, if the reason cited by those same authors is attended to, namely that charity does not forbid one from consulting his own interest according to his right, even though an injury happens accidentally to another. > 825. — « 43. If to anyone something has been given for sale at a price, whether low or moderate, and he sells it rigorously, it is probable, as the Ang. v. states, that he will do so.

Purchase does not consist in being unable to restore what has been received, but in being able to retain an excess, which she has acquired by her own industry. However, it is different with servants of the market, who are entrusted with goods to be sold at an unspecified price in a more suitable manner, so that they can do so for the benefit of their master: see 48 c. Lugo d. 26 §. 9. It is asked, whether a thing delivered to you to sell at a designated price, can you retain for yourself more than what you can draw from it? It is certain that nothing can be retained, if thou art a hired servant of the thing itself, or led by price to sell it.

Otherwise, there are two opinions: The first, which Bus. holds shortly above with Angel., and they consider it probable, in question 2, article 3, note 4, and page 422, question 4, affirms that one can retain more than the designated price if you sell beyond that price through your own industry, because that excess is not a fruit of the thing itself, but rather a fruit of your industry. The second opinion, however, is true, which those hold: 2. c. 24. dub. 49. n. 438. Lugo d. 26. n. 450. de 7 proc. c. 5. n. 38. c. 9 q. 4 r. 2 8 tr. 3 c. 7 §. 9 n. 40 sect. 4 p. 293 n. 43. 14 c. 2 punct. 8 n. 72 cum Sylvest. et Fag. (qui apud Renz. de 7 proc. c. 6 q. 40 putat primam sententiam improbabilem) negat te posse retinere illud pluris quod ex venditione retrahis. Reason, because the assignment was made by the Lord that the thing not be sold below, but not above, the price.

They however receive [or accept] n. 71 and c. agrees with Croix l. 3 p. 2 n. 414: if the lord has committed himself to sell in one place, and you, having

acted diligently there, sell much more in a very distant other place. But justly do they deny it, Lugo, loc. cit., lib. v. Fourthly, then you can retain only the price of your labor, but not the idle excess withdrawn from the thing which always bears fruit for its lord. And I say the same (whatever they may say), if another has committed something so great to you that you have bought it for a lesser amount with extraordinary diligence; in that case, besides the value of your labor, you will not be able to exact more from the Lord than you paid, since you purchased not yours but His name.

But you will be able to retain the excess from the sale of the thing withdrawn in the following cases: I. If through your industry the thing has been improved, and therefore you sell it for more, as P. C. C. N. 74 allows. Reason, because as commonly taught in 3. p. 2. n. 243, mixed fruits, namely those that arise both from the nature of the thing and from industry, should not be restored to the lord by the possessor either with good faith or bad faith, except so far as they respond to the nature, but not according to what responds to industry; for those fruits are not of the thing, but of man, occasioned by the thing, or through the thing as an instrument bringing profit to him. II.

If you have tacitly agreed with the lord, give him nothing beyond the designated price; thus Lugo disp. 26. n. 450. et . cum . If the profit is of little moment, as stated above, because then it is easily presumed that the lord consents, so you may retain that trifling profit for yourself. IV. If you, having exercised due diligence and finding no greater price, buy a thing for yourself, and later sell it for more and pay back to the lord only the price assigned.

Thus it is decreed. Fifthly, Num. 21, n. 439, c. et n. 75: cum tunc possis rei tibi emere, et postea eam vendere alterius pretio majori, dummodo postea adhibita diligentia ordinaria non invenisset occasionem rei emendae nisi illo majori pretio. Lugo adds n. 452., that then it should be reckoned as if you had desired to acquire for yourself or sell something whenever you had an intention of retaining the excess and simultaneously assuming the risk thereof, in case it might have perished. Nevertheless, Lugo well observed that it is not permissible for clerics, to whom commerce is forbidden, if they themselves purchase something with the intention of later selling it at a higher price after it has been repaired, as in the case where you have offered yourself for sale either to buy or sell?

They say that nothing can be retained, Mol. d. 363. and n. 438. But Rose, in the same place where he says that you can retain the reward of your labor if you did not have the intention to give it; thus indeed you were

mendacious and not faithful, but you were not unjust, since your labor was already worthy of a price. And this seems more probable to me, namely, that the Lord had already previously determined to sell that thing, and meanwhile another would not have been, who would have sold the thing freely to the Lord. 826. — « 14. When tailors sell cloth for those which they refuse to make according to their specifications, a lesser price is sold than for others, because they are the merchants' paupers or often bought from them, they can retain part of the price as a gift to themselves, provided that they otherwise act faithfully, since no injustice is done: and when it greatly concerns the merchants that such should come to their workshops rather than to others', they are thought to be remitted into their grace and given that part. t. 8.

r. 26. They nevertheless deny Saldas, because merchants falsely claim to be remitted, in order to entice others. Therefore, cautiously, as rightly observes Hinc, it must be permitted to tailors selling cloths to retain something of the price; for sometimes merchants rather pretend to give something themselves than actually do so, in such a way that if the lord himself were to go there, he would obtain the same thing for the same price. However, if the tailor faithfully conducts the business of his lord and the merchant gives him something truly gratis as a gift because he frequents that tailor’s workshop, or to allure him to frequent his own workshop, then the tailor could lawfully retain the gift, provided only that he uses moral diligence in purchasing from other merchants at a lesser price.

Thus c. . præc. c. 5. n. 37. cum Bus. mox suprà, et . 44. c. 2. punct. 8. num. 76. cum Fill. ib. the tailors cannot demand anything for profit which ceases to them by ceasing from their work, on account of merchants going to buy repaired garments when they themselves offer to go and purchase. This is to be understood, if any other person were lacking, who for free would purchase from the Lord, as we said above in the preceding note at the end of 827. — «15.» When a thing has been sold to two persons jointly, he acquires dominion who has received it in trust, provided that he shall have paid the price. If neither has been delivered to him, that which was previously purchased is owed to him who made the earlier purchase, and the other has an action against the seller.

If nevertheless anything is sold or given to the Church or other pious places, dominion is acquired before the act of delivery. If therefore the thing has been sold to one person and subsequently transferred to a second purchaser, it belongs to the latter. Take note: 4. unless the second purchaser is conscious of the prior sale; so 2. c. 49. n. 142. as in 6. P. P. 267. n. 4. punct. 2. §. 4. n. 40. cum communi.

And this even if this second purchaser is a privileged person according to sect. 4 conclusion 2 cited n. 40 cum; for then he is bound to hand over the thing first to the purchaser: but not before the judgment, if perchance himself has induced the seller to sell it to him again, as stated in ibid., and if the first purchaser is privileged, namely the pious place or the university; n. 4 et n. 9. Receive 3. if the thing has been delivered under a second title graciously; for he must restore to the purchaser the thing delivered to him, who has a right to the thing, according to l. Of the fifth chapter concerning the revocation of things, etc. This restitution, however, is not due unless another purchaser sins within a year, according to the law. Wherein there is fraud.

Ita cited n. 40. §28. — « 46. If the thing perish before the transfer, and it be certain and determined, for instance this house, this vessel of wine, perishes for the purchaser, unless otherwise expressly agreed upon, or perishes through the fault of the vendor. If, however, the thing is indeterminate (for example, if someone buys 40 modios of wheat from a granary, or birds from a flock), or if he buys a thing that is determinate in itself but measured by him (for instance, an entire heap of wheat all of one kind measured into separate units), then before the transfer of the thing or its measurement, the risk lies with the seller. See. 42. loc. cit.

Card. Lugo, on the 26th, chapter 14. Note 246. Third Treatise, Fourth Part, Chapter Seventeen, Section Two, Page Eight. » (Receive, if the buyer is in delay, so that the thing does not become diminished, according to l.

Read, ff. de peric. etc. Nevertheless, note that both increase and decrease in ret are regarded as indeterminate with respect to the buyer. n. 13 cum « 47. If the thing sold perish or deteriorate after the transfer of ownership, it perishes for the buyer, even though the price has not yet been paid, because the thing belongs to the seller. » c. 829. — « You inquire whether and in what manner it is permissible to purchase chirographs or debts owed by another? » Resp. If debts to be demanded later (or the right which another has, so that something may be paid in the future) are certain, to buy them off with an advance payment of their solution is usury, provided that the gain ceases and damage arises.

Bonaventurae, d. 3, q. 3, p. 10, ex Molinaeus et Pulcius: quia accipitur aliquid supra sortem ex mutuo; nam mutuat implicite minorem pecuniam pro exigenda majore. I said "certain," because if credits are uncertain, perilous, and litigious, or if they are to be demanded with difficulty, it is licit for him who is not the cause of this difficulty to purchase a lesser thing, insofar as either the uncertainty or the difficulty of the solution is

less or greater; for with such peril and difficulty they are worth less. l. 7. c. 20. d. 8. An uncertain or difficult-to-collect credit can licitly be purchased at a lesser price, even though it might easily be fully recovered: because the price is taken from common estimation, not from the particular circumstances of the purchaser, as stated in S. Th. 2. 2. q. 77. art. 4. Lugo, d. 25, n. 84, . 44, c. 2, punct. 44, §. 3, n. 456, cum contra alios.

But it is brought into doubt whether a certain debt can lawfully be bought at less than its minimal price? The first opinion affirms what Cajetan holds. Usury, near the end. Arm. eod. v. n. 33. n. 234. l. 4. c. 7. n. 47. c. 34. in fin.

The author in ad additamentum ad tertium tractatum tertium, caput septimum, sectio octava, nota tercia, with the Dictionary and considering probable, Lugdunensis follows d. 26, nota novem et quinquaginta, adhering also Axor, tertium, librum septimum, capitulum quadraginta, quaestio quinta, versicle. In this, when spoken in discourse 34. Diana, tractatus 8., responsio 49., secundum Sa, Malder. Philarcho, and Serra in . 14, c. 2, punct. 44, §. 3, n. 459, et also refers to . 2, c. 24, n. 66, thus taught Lovanium cardinal Bellarmine.

Reason, because this contract is not one of loan but of purchase, in which money is not received, but an action towards that; and therefore it is deemed just that price, which commonly merchants pay for talers by chirographs. The second opinion denies this, and that is held by S. 2. c. 21. dub. 6. n. 67. Lugo d. 26. n. 96. . n. 160. cum . p. 2. n. 984. . 3. tr. 4. c. 47. §. 5. n. 33. Azor l. c. q. 2. art. 2. n. 8. pree. c. 4. n. 49. et alii plures.

Reason, because the action for liquidating a credit truly is worth as much as the debt itself when there is no risk or expense involved in recovering it; hence, purchasing that action with an anticipatory solution, when no inconvenience intervenes, is virtual usury. This opinion is indeed advisable both as a more common and more prudent one; but primarily, for two reasons: first, on account of the authority of DD., and secondly, on account of the reason itself, as Azor says; for natural things do not have price, but are worth as much as men estimate them to be, according to St. Peter. Prices 63. according to the law. Juliam apud Cabass.

It is evident, he says. Whereupon the same Lugo, loc. cit., n. 99. Cross, and. Now, however, since in practice this is commonly held to be exposed to such risks and inconveniences; for this reason it does not seem improbable that its price would decrease according to common estimation by men, and consequently it could be purchased at a lesser cost.

Another is the reason for a loan, another for purchase; for from a loan nothing can be exacted besides chance unless an extrinsic title come to it; but in purchase alone the estimation of men constitutes the just price of things, and this furnishes a title to purchase at a lesser cost. 830. — « 4. They commit usury. Ministri regum et principum, » etc., qui ut anticipatam faciant solutionem, aliquid accipiunt a cre- ditoribus. 2. Who receive something from debtors on account of a deferred payment; because they receive something beyond the limit for a gratuitous loan.

Bon. l. c. . . " 2. Minors can regularly owe debts and stipends, whether salaried debts due to soldiers or families of nobles, because they have attendant inconveniences, dangers, and troubles in demanding them; for this reason it is likewise permitted even if those credits were due either at the present time or even in the past. Bon. l. c. ex Reg. Mol. et al. "ibid."

Who Himself is the cause of a difficult solution, sins against justice by amendment of the lesser, and is bound to restitution; firstly, because He Himself is the cause of the damage, when what is credited on account of His own guilt counts less; secondly, because otherwise He would obtain a reward from His own offense. This is certain, ap. All. See Chapter 44, paragraph 2, point 44, section 3, note 457: "Mol. d. 343 l.c., that it is not free to inquire about matters which are incumbent upon one to resolve the debts of magnates; rather to resolve for one rather than another, unless perhaps someone has a right superior to others; (See supra regarding order Restit.) but to be held responsible to resolve for all in proportion."

Good. In the same place, see chapter 40. Article II. What is a negotiation, and what are those that are illicit? 831. When will negotiation be gravely illicit for clerics? 832. What if a cleric engages in negotiation under another's name? 833.

What if he transacts through another? 834. May it be licit for a cleric or a religious to purchase animals, with a view to selling them as provisions in their fisheries? May it be lawful to buy cows for grazing them in the pastures of others? 836. Is it permissible to purchase a field with its fruits?

Is it permissible to sell more expensively, so that one buys cheaply? May wool be bought in order to sell cloth? 837. May a cleric absolutely engage in commerce for necessity's sake, whether his own or his family's? 838. At some time is negotiation with laypeople illicit?

May clerics engage in business transactions or secular procurations? —

"Resp." This is when one procures something for himself with such an intention, "that it be whole and not excessive" (as if in better condition, excessive). Because more money is made by selling or exchanging, lucre will be gained. Which, because it is obnoxious to the danger of many sins and very distracting and indecent for a clerical statute, so you adhere to profit thereby, is severely prohibited to those constituted in Sacred Orders and in all religious [persons] (constituted only in Sacred Orders, according to the 44th canon, chapter 2, point 4, § 4, note 37.

Lugo d. 26. n. 25. n. 4. et alit communiter ex c. Secundum 6. That neither clerics nor monks. He also affirms this concerning novices, as Tur. says according to Lugo; but Lugo justly doubts about this, because novices do not come in odium by reason of religious names), « so that they may sin like dead people » (as the common opinion states (but not against justice); and they incur suspension and excommunication, a sentence that must be executed nevertheless; As for the immunity of gabella, see .), « if they give much attention to negotiation, as it is said in 1. . 3. t. 4. cap. 17. §. 7. Bon. d. contr. "d. 3. q. 4. p. 5."

C. Lug. d. 26. sect. 3. n. 49. Therefore, it is a common opinion that clerics should not prohibit small transactions. Thus in chapter 4, article 7, section 2, conclusion 2, number 4. Habert t. 4. p. 287. p. 279. n. 5.

Lugo d. 26. n. 25. et . 14. c. 2. punct. 4. §. 4. n. 37. It is doubted whether there is a prohibition against benefices in lesser matters? They deny it, Molina d. 342 and Lugo c., who think that what is probable when treated in tract. 35, c. 4, q. 8, n. 28. It is better to hold the opposite view with the common opinion than what Lugo d. 26. n. 26. c. holds, and also Sa, Tab. casus. 24. q. 3., where negotiation is prohibited not only for presbyters and deacons but also for clerics: which at least refers to beneficiaries in minor orders; it cannot be understood as referring to subdeacons, since the order of subdeaconate was not yet among the sacred orders when the Council of Carthage III concluded its work in the third century, of which is the aforementioned canon; indeed, only the orders of presbyterate and diaconate were considered sacred at that time, as is evident from conc. c. 4. ap.

Tournely Practica Theologiae de Sacramentis Ordinandi Questionem Ultimam Articulum Quartum. Quamobrem autem negotiatio sit interdicta beneficiariis, ratio est, primum quia ex officio beneficiarii Deo debent vacare, utpote addicti ministerio ecclesiastico; deinde quia, ut asserit Lugo, beneficiarii, non solùm in majo- ribus, sed etiam in minoribus constitui expoliantur bonis acquisitis ex negotiatione; ergo etiam iis negotiatio est interdicta. The contrary opinion, however, is strenuously maintained on

some valid ground. « 4. If a cleric once, and again merely for the second time engages in commerce concerning matters non-grave, such as books, crosses, etc., secretly reselling them at higher prices, this is not mortal sin. Lugo l.c. A cleric does not gravely sin by twice or thrice exercising a non-reprehensible trade not involving large quantities, because the laws speak of him who exercises it.

Thus. 2. c. 24. num. 4. Lugo, in the 26th day of the third section, number 24., chapter 2, paragraph 4, section 4, note 38, says: cum. Fill. Or mon. Whereby the exercise of an unjust business is prohibited to clerics. From this, even if he engages once in a serious matter of business, they still do not probably commit a grave sin.

But Cajet. Michael de Palao and ibidem say that it is not grievous to frequently engage in business transactions when they are made without scandal, and the transaction is not disgraceful, provided that a warning precede; but they rightly hold this to be minimally permissible, since laws prohibit grave negotiations before a warning: a warning is required only for the sake of incurring penalties, not so that such practice should be illicit, as it is prohibited by law precisely because it is intrinsically indecent for clerics. 832. — It is noteworthy here from the bull of Benedict. XIV. Contrary to the negotiation of clerics, enacted in Rome on the 25th, which begins: Apostolicae statutum esse, ut constitutiones et poenae contra clericos negotiantes intelligantur etiam pro clerico qui non suo sed alieno nomine quomodolibet illicitam negotiationem exercet. 'Item quod negotia à laïcis incepta, si ad clericum quovis titulo deferantur, statim sint ab eo dimittenda; quòd si non possint dimitti sine detrimento, permittitur continuatio, sed tantùm ad tempus, et per interpositam laïci personam, ac de licentia S. C. Concilii (aut Ordinarii, si sit extra Italiam); aliàs incurret clericus eamdem spolii poenam. 833. — Plures autem AA. dicunt non peccare graviter clericos, qui per alios negotiantur, dantibus ipsis pecuniam, aliis ponentibus industriam; nisi eorum superintendentia esset tanta, ut ipsimet negotiari viderentur; ita n. 40.'

Lugo disp. 26. n. 36. in fin. cum apud Croix l. 3. p. 2. n. 4009. But today it must be entirely held contrary to that, according to the bull of Benedict XIV. Apostolicae, ubi statutum est poenas inflictas adversus clericos illicitos negotiatores extendi etiam ad clericos illicitè (verba bullae) sub alieno laici nomine quomodolibet negotiantes perinde ac per seipsos ac proprio eorum nomine negotia ipsa illicita exercerent. Which is understood (as the aforementioned Benedict himself more clearly explained in the Synod t. 2. l. 9. c. 6. n. 4. and 5.) to refer to clergymen who engage in business transactions through laymen, acquiring profit for themselves.

That this must be understood in such a way is also evident from the same bull, where the Pontiff immediately after the aforementioned words declares that goods thus acquired by clerics under another's name shall be subject to the penalty of spoliation. Furthermore, from the bull of reigning Clement XIII. When first issued on the 27th, the bull of Benedict is confirmed, and again explicitly prohibited is it for clerics to engage in business through an intermediary person, and especially to enter into active exchange with others. Furthermore, in this bull, Clement insisted that even if there is necessity of family, a cleric may not engage in business transactions without the dispensation of the Apostolic See, if he is within Italy; whereas bishops may do so if they are outside Italy.

Moreover, it is added that if there is any doubt whether a contract of negotiation can lawfully be imposed upon a cleric, or not, he says with utmost expedition to send a way to the Sacred Congregation of the Council, that it may decide the doubt. 83¿. — « 2. It is not prohibited to negotiate ecclesiastical or religious matters, if they buy sheep which they pasture and sell, because they sell the produce of their fields or lands. Mol. Number 29.

That they may use it even if they shear the flock like wool, or sell the fetus, milk, and wool. C. Lug. Where, however, they deny that it is permitted for them to bring fields into cultivation so as to sell the fruits, this (though permission is not properly speaking a matter of trade) is specially prohibited to them by the Council. Carthag.

III. It is certain that it is not lawful for clerics or religious to cultivate foreign fields for the purpose of selling their fruits. Thus as Bus. above Lugo in contra. d. 26. n. 29. 2. c. 24. num. 6. c. 43. §. 7. n. 40. c. 2. q. 4. r. 2. etc., the reason is because (as he said, non caus. 24. qu. 3. where it is thus stated: It has come to the holy Synod, because some of those who are numbered in the clergy have accepted the conductions and causes of alien possessions for the sake of a base gain; and they themselves separate from the sacred ministries through despondency; but they concur with secular houses, and the governance of their goods is taken up as an excuse of avarice. Therefore decreed the Sacred Synod henceforth that neither a cleric nor a monk conduct possessions or mix with secular procurations.

After conversion, it is licit for a cleric to purchase an agrum with fruits already mature and to sell those fruits, because then he sells the fruits of his own agrum. Thus Fil. and Bus., as will soon be found below. It is also licit to buy foals in order that one may later sell them as tamed, says . 46. d. 4. p. 43. §. 3. n. 3. with Gutt. and Lassarte; but this does not much please me. 835. — But is it permissible for a cleric to buy cattle or pigs in

order to sell them dressed, or to make profit from their young, milk, or wool? Commonly they admit this, the Doctors, that if animals are fattened or milked in one's own estates, then . c. n. 6.

Lugo, note 29, chapter 2, part 4, section 4, number 41, canon 4. But there is doubt whether it is permissible to nurture those animals from alien properties so that they may later be sold? If for this purpose alien properties are brought into play, I deem it altogether necessary to hold that it is not permissible, according to the cited Council. Chalcedon (unless some contrary custom prevails). Reason: because if there be a prohibition against leading fields thither to yield fruits for sale, all the more does it seem that this is forbidden with regard to animals intended for food.

Whether, however, it be permissible for a cleric to purchase fruits from the fields of others for animals to eat and sell the meat thereof? Speaking in terms of genera liter, they concede that. Q. 2., art. 4., n. 7., and Satm. ibid., n. 34., provided that scandal be avoided. But Laya denies it in his first book, chapter one, and in his sixth book, chapter five, number forty-two. However, I am unable to understand why this is absolutely illicit; for on one side this is no negotiation; for loving a thing so that it may be sold in better condition through changed affections certainly does not amount to negotiating, but to receiving the reward of one's labor, as teaches D. Thom. 2. 2. Question 77. art. 4. ad 4. with objections.

From another side, it is found that the prohibition of this for the dog is undesirable. The general rule is that whatever is not expressly prohibited by law is licit, as has been demonstrated in Disertat. de conscientia probabili. He says. But I respond, either it is inherently disgraceful, or it is disgraceful on account of the scandal of others: that which is inherently disgraceful cannot be called such; for if this were the case, even a cleric would be disgraced by eating animals in his own fields, which commonly is forbidden according to Decretals 836. — « 3.

The cleric does not sin 4. If he buys a field with fruits already mature, and sells those; because he sells the fruits of his own field. Card. de Lugo 1. cit. ex Molin. If that which had been acquired for one's own use, subsequently he sells it either because he no longer needs it or because his counsel has changed.

Ib. It must be noted that since commerce is forbidden to clerics, a mind more base must be amended in order for them to sell at a loss; hence it is permissible for them to sell at a higher price so as to purchase at a lower price. 42. In like manner, it is not forbidden to clerics or monks to purchase something with a view to consuming it and then sell it again if its

price increases, so that they may acquire similar things at a cheaper rate; because this is not proper commerce (says S. Th. 2. 2. q. 77. art. 4); nor does it pertain to merchants, but rather to household managers and politicians, who have the task of providing for the necessities of either the household or the city with a view to use. Neither is it prohibited for them to purchase in excess for security and prudence's sake, and to sell the surplus at a higher price, because they buy so that provision may not fall short, as Lugo says in day 26, note 32.

Mazzotti. tom. 2. p. 428. It is also licit for clerics to buy iron for making swords: colors for selling paintings: wool for selling cloth: provided always that they themselves make the cloth, and not through workers hired for the purpose, because otherwise this would greatly tend towards commerce; thus Lugo a. 34. with Mol. et Malder. And they affirm this, even though it might properly be so; nevertheless, Lugo doubts this matter. Is it permissible to conduct horses to places for their placement? Molina still denies this, but Lugo and allow it. « 4.

Is it truly permissible for clerics to engage in business transactions through others who are not servants, especially in necessity? Cardinal de Lugo d. 26. s. 4. n. 36. c. d. 19. un. 1. 4 c. 40. art. 1. 837 — It is commonly held among Doctors that it is licit for a cleric to engage in sustenance-provisioning on account of his own or his kin's necessities. Thus Lass. 1. 2. a. 14. n. 6. Lugo d. 26. n. 37. et 14. c. 2. punct. 4. §. 1. n. 39. cum Mol.

Therefore, concerning a cleric or monk where it is said: Nevertheless, it is not right to contradict just business on account of diverse necessities. But here there is doubt as to what necessity is required: whether it be necessity of life or necessity of state? Neither too strictly does §. 7. n. 39. require a necessity for sustaining life. But more commonly and probingly d. 4, p. 43, §. 3, n. 8. . 6, c. 5, n. 402.

Croix l. 3. p. 2. n. 1006. et Mazzott. de contr. c. 3. p. 127. in fin. say that sufficient weight is given to a serious necessity for maintaining a decent state, namely, if otherwise the cleric cannot conveniently sustain himself and his family. Reason, firstly because the ecclesiastical law does not oblige when there is great inconvenience; secondly because the prohibition, having been made for the sake of decent status, is not considered to prohibit what is necessary for maintaining one's own or one's family's decent status. 838. — It must be noted finally that negotiation, although prohibited only for clerics, will nevertheless sometimes be illicit for laymen: namely if one or a few merchants purchase in large quantities necessities for food, clothing, or common use of citizens before they have sufficiently provided for themselves with regard to these things, so that

afterwards they might sell them at a price greater than the market valuation. Thus § 2 n. 44 and 45 et cetera. And they add that in this they sin against justice and are to be held liable for restitution. But it is not improbable that the opposite be so, says 2. c. 24. n. 454., to whom Palaus adhere, saying that these men rather sin against charity and against legal justice, not however against commutative justice; because they do not sin by selling, nor by not selling immediately, since no one is bound to sell his goods.

However, it is presupposed if the price at the time of sale was irrational; but see what is said in number 845. They admit, however, that merchants may sell goods at a higher price when they have purchased them before bringing them to the city. Just as they also admit that a rich man may purchase grain in urgent necessity of the citizens, so that he may sell it later at a moderate profit and thus provide for their necessity. It greatly matters in this place to inquire whether it is permitted for clerics to engage in commerce or secular procurations.

It is certain that it is illicit for clerics to exercise the office of tutor, curator, or procurator of minors, also the office of town official, and any other public office by which they were bound to render accounts either of justice or of goods administered. And for this reason such clerics become irregulars according to c. unic. de obligatis ad rationem. Mazzoto however advertises in his treatise on irregularities, chapter nine, point five, number sixty-three: with a deposited administration, an appropriate fiduciary. Ii2 Lib. 4. Treatise 5.

Regarding the seventh precept, He speaks in regard to the deeds that precede. Nay (as they themselves add), it suffices that it renders reasons, and lays down administration, even if it does not discharge what is due. Commonly however, the PP. [Pope Pius] with n. 64 teach that administrators of pious places, or widows, or wards indigent for reasons of piety, who have undertaken such a burden out of devotion, can properly be ordained even before the submission of accounts, by reason of c. 4. That clerics, or monks, may be more clearly understood from chapter 6, question 1, of Peter Lombard, from chapter 24, question 3, of Aquinas, and from article 5, distinction 39.

We come to the sought-after permission; commonly it is taught in II Sentences, dist. 6, p. 13, n. 8, n. 4, tit. loc. cit., cum vel mon. ubi sic dicitur: Sed nec procurations villarum, aut iuridictions etiam saeculares... clericorum quisquam exercere praesumat. Si quis autem adversus haec venire tentaverit, quia contra doctrinam Apostoli Dionisii (2. ad Div. 4.): Nemo militans Deo impliet se saecularibus negotiis; ab ecclesiastico fiat

ministerio alienus, pro eo quod, officio clericali neglecto, fructibus saeculi ut placeat, se immergit. From the aforementioned text it is inferred that a cleric incur suspension from office, but only at the judgment of one who shall excuse ignorance, even though it be gross: for there the word "praesumat" is fittingly placed, which imports a certain customary presumption through the censure of knowledge, as we say in lib. 7, n. 47. It is stated in the second chapter of the work "Contra" by Rone.

Reg. 5. in praeci, illum clericum serio increpandum esse in hac materia, qui ita se immergeret in hujusmodi procurationsibus, ut sua ministeria cogeretur negligere, prout deducitur ex verbis textus allati; officio clericali neglecto, fructibus saeculi se immergit. Hence I would not dare to condemn a mortal cleric who would not neglect his ministerial duties on account of such a commission: especially if he did not do so for the cause of avarice, but rather to maintain a more decent state and the welfare of his family. ## DUBIUM IX. ## What is a census contract, and is it permissible? When is a census permissible? Is it permissible to include persons in a census? If the thing censued perishes, does the census perish with it? Is it permissible to add an assurance pact to the census? Is a redeemable census permissible on both sides? And when is a census of vitality permissible? What conditions are required in the bull of Neelai V? What conditions are required in the bull of St. Pius V? Condition I. That a census may be taken concerning a stable thing, and one designated.

II. That money may be counted. III. That an agreement for anticipatory dissolution may not be made.

IV. Ne the assessor be obliged to a fortuitous census. s17 Dub. hie 1. If the thing perishes, may the census be extinguished? Dub. s. If, upon the expiration of a certain time, no fruit is produced from the property, should alimony be due? Dub. s. An pereunte re specialiter designata, maneant obligata alia bona hypothecata?

Condition V. That the custodian may not be deprived of the thing to sell it. VI. That a loan be not made for a pension not dissolved.

VII. Let no census be created from unsolved pensions. VIII. That the census-taker may not claim a reward again, and that the census-taker may be redeemed.

IX. That a census not be sold at a greater or lesser price to others, will the bull of St. Pius obligate in conscience? And whether it will obligate when there has been no reception? — « Resp. It is, when a certain sum of

money, for example 100 florins, is bought from you the right to an annual perquisite from your goods, or some other useful thing, whether productive or not, § some kind of pension, or census, for instance five-yearly florins, or six, according as custom or law has assessed it; so that this may not be a loan and usury, if you do not have any other evil intention, but a true purchase and sale, because the purchase is not of the precise pension itself, but only the right to receive it (Ita. 14. cap. 4. punct. 2. §. 4. n. 24.) "which is much less valid; hence it is also bought for a lesser price; although after many years the price greatly exceeds. Mol.

Book 3, Title 4, Chapter 48, and the rest commonly. However, more correctly C. Lugo, d. 27, s. 2, n. 20, proves that in order to excuse the census from usury, one should say: not the purchase of pensions, nor the right thereto, nor the fruits thereof, but rather a part of the usufruct of such property on which the census is established; so that the entire direct dominion over the property remains with the seller, while the useful dominium or the right to usufruct is sold only in part. Hence, the following cases are resolved, which can also be resolved from the nature of the purchase and sale. 4. This contract is unjust if the just price approved by law or custom is not observed, as Charles V established in Germany that one has a right to five only for four hundred purchased; 840. — 2. Not only is a real census licit, that is constituted over something in re, as above stated, from whose utility a pension is drawn, so that whatever transfers possession of the thing also transfers with it obligation and burden; but also (at least by nature of the thing and through a positive legal prohibition) personal, and constituted immediately upon a person who by his own labor and industry may be useful and produce some fruit, or have goods either in prospect or reality, from which a pension can be drawn: otherwise the right which he would sell would not be appraisable in price, and thus the contract would be fictitious.

Thus » it would be more probable Covar. . dub. 3. n. 2. etc. against . C. Lug. d. 57. §. 225. n. 25. ubi censum mere personale illicitum esse docet, est probabilius et prolixè probat (1). An census personalis sit licitus de jure naturali? The first opinion denies it, and this is held by Lugo, Decree 27, number 25, with Molina. The first opinion denies it, and this is held by Lugo d. 27. n. 25 with Mol.

Concina t. 7. p. 576. §. 3. cum Panorm. quia persona non potest vendi ex liceatu. Because it is alienated. And seq. c. de Action. et de Pignor. They prove it from Extravagant 4 and 2.

Martini V. et Callicti III., qui solos census reales approbarunt; et clarius ex bulla S. Pii V. in sua Extrav. de Censibus, qui expressè statuit censum super

re immobili, et non aliter, constitui posse. The second opinion, however, is more common and more probable, teaching that it is permissible. Thus. 2. q. 22. d. 4. Sot. l. 6. qu. 5. art. 4. concl. 4. . 6. p. 44. n. 2.

Abelly page 376 note 2. Merb. tom. 4. p. 354. q. un. p. 324. Cabass. lib. 6, cap. 42, n. 5, cap. 6, concl. 4. Wigandt tr. 9. ex. 8. n. 4. r. 4. c. 2. q. 4. r. 4. .

Anacel. in idem titulus distinguitur tertio, quaestio sexta, numerus sexaginta et quadraginta quatuor capitulum quarto punctum secundum sectionis quartae nomen viginti sex cum ex constitutio. Nicolai V. in sua Extravagantes de Censibus, ubi videtur clare approbari census super personis, ut notant c. et Haec sunt verba bullæ: Cum opportuna contrahentium securitate..., ac potestate vendentis, personas earumque proprietates, reditus, jura, etc., census et omnia, et singula mobilia et immobilia bona obligandi, et obligari faciendi, etc. Idemque confirmasse Gregorium XIII. testantur Palaus et Wigandt. It is proven by the second reason, because if each one can lease his works, he can also sell them. In tal contrahendo proprie non ematur personae, sed improprie; nam proprie ematur jus super industria personae.

Just as in a real census a premise is not purchased but the right to receive fruits from it is purchased; so in a personal census a person is not purchased but the right to receive fruits from labor and industry is purchased. Nor is it valid to say that such a contract is some kind of virtual loan; for in a loan one is compelled to return the same sort of thing, whereas in this capital census one makes a dead giving, and only what is at the discretion of the seller can be returned. Whether, however, it is lawful for a redeemable personal census to be redeemed from either side? See to be said in seq. n. 843.

As for the bulls of Martin V. and Calixtus III., it is responded that in them there is minimal disapproval of personal census, either because they dealt exclusively with real censuses, about which it had been queried whether they were licit; hence, the Pontiffs approved them only to that extent. Hence Cabass. l. e. . §. 2. n. 29 et 33, with Prado, etc., do rightly say that the aforementioned bulls are not binding, since they are not preceptive but only approve the conditions expressed therein. In the bull of S. Pius V., it is indeed commanded that a census be established only upon a stable matter, yet nevertheless it is not declared that a personal census is illicit according to natural law. And indeed, whether this bull of St. Pius be received anywhere, we shall see in chap. 848.

Chapter 3. On contracts. Dubium 9. • 3. Unjust are the sellers or those

assessed, who obligate purchasers or those subject to assessment to a thing incapable of yielding fruit, at least as much as the pension demands, or one that yields something indeed, but already sold to other assessors.

Bonaventura dubium tertium quarto quaestionis quartae partis nonaginta et quadraginta tres octogintaquattuordecim — « 4. » Just as in a purchase the thing perishes through the damage to the purchaser, so also in a real census, if the thing upon which the census has been imposed perish, or its fruits without fault on the part of the seller, then the census perishes such that the purchaser, or censualist cannot any longer receive either the fruits or the census: because he who buys, buys at his own risk. Boniface, in the same place, chapter thirty-five, paragraph two, note two hundred and twenty-five. Wherefore to avoid this inconvenience, the following method has been found: 842. – 5.

It is licit to adjudge another pact of assurance to the contract of census, as they approve, chapter 46, and decree 14, so that if the thing on which the census is founded perishes, damage be incurred by the seller; hence, he remains obligated either to maintain it with other goods of his own, or to redeem it by lot at the same price. However, this pact must nevertheless compensate the seller, either by increasing the price of the census, or by specifying a lesser annuity. Goodness Book, Chapter number 30. See below no. 847. 843. — “6.”

It is licit according to the nature of things both the irredimable census and the redimable one, whether from one side or the other, as is evident from the explanation of the terms: for an irredimable census is so called because the seller cannot redeem it at his own discretion; but a redimable one, because he can, by giving to the purchaser the same sum that he received, and thereby again purchasing what he had previously sold. It is said to be redimibilis on both sides, since it has been agreed upon that both the purchaser and the seller may dissolve the purchase and recover the sum given. See what has been said about the pact of retrovendendi and reëmendi, supra n. 842 and 843. (4). • 7. Nevertheless, because a redeemable census contract, from the perspective of the purchaser, is a perilous thing, it should not easily be advised: for in the Constitutions of Martin V and Calixtus III.

PP. The contract of usury with Charles V, Emperor, is judged contrary to this. But this should be understood according to the presumption of external forum: moreover, those constitutions are thus generally presumed at many places (1) Art. 550. A perpetual census for the price of a sold immovable thing or for the title, whether onerous or gratuitous, which has ceased to be constituted, is always redeemable. The creditor is to establish

the laws and conditions of redemption, nor less stipulate, that the census not be redeemed before a time determined, which cannot extend beyond 30 years; any agreement to the contrary is null.

Article 1911. The perpetual census is always redeemible. However, it is possible to agree between parties that redemption may not occur before a certain time, which cannot be further than ten years; they can also stipulate that redemption shall not take place unless the censualist has been previously notified for some time. Article 1912.

A debtor of perpetual census can be compelled to redemption: If within two years he does not satisfy his obligation; If he does not furnish security as was agreed upon; If he sues in another forum or if his goods are published for sale. Art. 1913. Edit. They are not received, insofar as they prohibit those things which do not oppose natural law, as noted in . 3. t. 4. c. 48. It is questioned whether it is lawful to redeem a census from either side?

There is a double probable opinion. The first opinion denies this, which is held by Sot. l. 6, q. 5, a. 3, concl. 4 and 14, c. 4, punct. 2, §. 3, n. 41. etc. The reason being, wherever money is handed over with the agreement to receive it again, this constitutes a virtual loan; hence whatever is received beyond the measure thereof is usury. The second opinion, however, affirms this, and those maintain it: . 2. c. 22. d. 10. . 3. tr. 4. c. 48. n. 8. tr. 32. d. 6. p. 24. §. 4. n. 2. . pr. c. 7. n. 24. also Val. Salas, Diana, et Barth. according to St. Faustus, n. 40.

This opinion seems to me sufficiently probable when considered with regard to the nature of things, provided that the limitations which I noted concerning the re-emptive contract are observed (n. 843.1). For truly, no reason can be assigned for the disparity in the sale of estates and in this sale of tax-receits. But with regard to Grælis it is asserted that this is a virtual loan; since this contract entirely differs from a loan, for in a loan, if the thing pledged perishes, the lender suffers loss; but here, if the thing taxed perishes, the tax collector suffers loss. (See exactly what we say in note n. 843.) And they [i.e., certain authorities] assert that this holds not only for real taxation, but also for personal taxation; which is improbable if due proportion is observed. However, as they rightly observe, such contracts are not devoid of the risk of usurious intent. 844. — « 8. Census vitalius, quia est virtualis sponsio et nititur ad eventum fortuitum, licitum est. t. 9. r. 70.

» And commonly d. 6. n. 28. with S. Th. The price of this vital census is established according to the ratio of age and health: hence the Conciliar

Decree says in the third question of the fourth part, number 48, and Cabassus in the sixth book, page 42, number 8, that if the enumerator can extend up to the sixtieth year, he may annually demand forty gold coins for four hundred. But 2. c. 22. n. 41. to which Croix l. 3. p. 2. n. 4023. and p. 142. adhere, they say can demand one for seven or eight, which amounts to about twelve or fourteen per four hundred. And elsewhere (in Auctar. v.

Societas Offic.) ait. pro 100.) (2). 845. — Hic videndum quae conditiones requirantur ad licitam cen-sum constitutionem. According to natural law, as it is said in 2. c. 22. num. 74: only two conditions are desired: the first, that there be equality between the census and the price; the second, that agreements added beyond the nature of the census (1) "Nevertheless, a negative sentiment should be recommended, because an affirmative one is perilous." 10. n. 200. The price of the census vitality (gall. rente vlagere) is permitted to be determined by the arbitrament of the contracting parties.

Let it be justly compensated. According to canonical law, there are two bulls by which several conditions are assigned for the institution of rents. The first is the bull Sollicitudo issued by Nicholas V in the year 1452 for both Sicilies: in this, the census accustomed to be instituted in the aforementioned kingdoms is approved, even with agreements and penalties appended for security; provided that these conditions are observed: four. That a census may be specially constituted concerning a certain matter, and generally concerning all the goods of the censuary.

II. That there be a contract for repurchase at the same price. III. That the pension to be paid should not exceed ten for each hundred.

In hoc autem ait 7. art. 3. n. 14. standum esse consuetudini locorum. 846. — Secunda bulla posterior est S. Pii V. quae incipit Cum onus, etc. edita ann. MDLXVIII. In hoc pluribus alias conditiones praesoribuntur: Et I. That a census may be constituted over a stably fruitful thing and designated one, from which personal censuses are excluded even if hypothecations were celebrated, and that it is more truly held so. q. 4. art. 3. n. 4. et . 14. c. 4. punct. 2. §. 2. n. 50. But against this a stable thing is considered as given land, and also perpetual office, and perpetual census irredeemable, nay even redeemable, like against Molina and . 3. Bon. c. Notat tamen .

See the next number 847. II. That the census enumerates money expended, before a notary and witnesses. But here is queried whether this condition does not obligate in foro externo, so that it would be licit to constitute a census from money antecedently debt-bound?

Affirmant. 2. c. 22. n. 80. n. 88. tract. 8. r. 44. cum Megala, Mald. Val. on contract, lib. 9, tract. 2, cap. 6, sect. 2, n. 4. They deny, however, the Father, tractatus 33, distinctio 6, parraga 46, nomenclatura 8. With reference to decision 390. Lugo d. 27. num. 83. cum Salon.

Reply and to others many. Reason, because although a bull is justly constituted to avoid frauds, if in some particular case the fraud or injustice ceases, nevertheless the danger thereof does not cease. This indeed is the second opinion, which seems more probable; but the first does not appear improbable in a case where there is absolutely no fraud or injustice in any particular instance: for although it is more probable that the law does not cease to be valid when its purpose ceases in a particular case, yet the contrary still appears probable according to Cajetan. Syllogism.

And to others besides, as we said in the fourth book, note 499. If, however (speaking in our case), the sale of a fruitful thing by means of credited money is certainly valid and just, why should the sale of a real census be deemed unjust, which undoubtedly is a true sale, since the right to the fruits of the land is sold, in which the census is constituted, as well argues Lugo, loc. cit., n. 80, with Soto. Salas, etc., ad probandum, quod jure naturali minime sit illicitus census constituimus ex pecunia credita. Here is questioned 2nd: whether, if the seller be damaged in the price, he can diminish the pension, or must he hold himself bound to pay the whole amount, and the assessor be held bound to make up the difference?

Both seem probable. See no. 5. III. That the release of the pension may not be made prematurely or brought about in such a way as to be included in the contract.

However, it is said by Bonaventure in the Third Book on Contracts, Question 4, Article 1, Number 26, with reference to Molina's work on Book 390. Fill. Reb. Salas, It is illicit to obligate a census-taker to pay from his own expenses the pension in the censusor's house, because this burden would be outside the nature of the contract, as correctly stated in 4. art. 3. n. 6. and Bon. l. c. n. 35. with Reb.

Salas and others, against Rod. Understand that unless for this reason the burden is diminished, the price is not reduced. IV. Let not the appraiser be obligated to fortuitous cases; hence, if the hypothecated thing perishes, the assessor may not demand that another thing be substituted, according to the rule, if a different thing is found alien; or if it yields no fruit through the culpability of the assessment; etc.! 847. — But there is doubt whether,

upon the death of the thing, by a precise bull of St. Pius, the assessment also perishes according to natural law?

The first opinion denies this, and those maintain it: 33. d. 6. p. 31. n. 3. with Sot. de contract. c. 4. punct. 2. §. 4. n. 48. with Salas, Mercad. . etc. The reason for this is because the obligation in a census primarily concerns the person, and secondarily the thing, which is obligated only as security for the hypothec or for the assurance of a pension to be paid: hence they assert that when the hypothecated thing perishes, the personal obligation of the census does not perish. But considering the authority of so many reverend doctors, it seems to me entirely to be held thus. The second opinion, which they hold. Lugo d. 27. n. 403. 5. q. 39. n. 4.

Mol. d. 383. et 394. dub. 3. . 3. tr. 4. c. 45. n. 4. P. P. 594. n. 4. c. 4. q. 4. r. 5. Anacl. num. 75. item Val. Reb.

Medium opuscula secunda. Et apophthegmata quarto septuagesimo septimo. The reason is most compelling to me, because in a real census pension is not constituted over a person, but over a thing, whose fruit right is sold; hence Lessius rightly says that Sotum is deceived, and Co- var. saying that only the thing is obligated there for the hypotheca of personal debt; for indeed in a census it is not the thing that is obligated for the security of pension payment, but the right to receive the fruits from the censured thing is sold? Hence, as by the extinction of the thing you lose the right to hold in servitude which you had over it, for example, to pass through, gather glands, etc.; so too you lose the right to receive the fruits through the contract of the census acquired by you, and in that case the seller would be released from all obligation. Thus; yet himself admits it and consent is given, 4. c. 6. n. 14. et §. 3. n. 4., that a contract added for paying the pension may still be sustained even when the thing perishes, provided that another contract of insurance be added to the census contract, so long as that pension is moderated proportionately.

But I cannot assent to this opinion, although I consider the judgment of Lugo and others probable, as I shall say presently v. seq. It is doubted 2nd, that it be lawful to demand the whole pension by virtue of the contract, even though the fund does not yield produce for some years; provided that the price be diminished, because the pensions to be paid in sterile years are virtually compensated by those pensions which would have been payable for fertile years and which are relaxed accordingly; and thus equality now comes about. However, in our case, when the pact is made for paying pensions even after the thing itself has perished, no equality can be achieved, since the pensions to be paid remain indefinitely; for the relaxed earlier fruits, whatever relaxation may have been made, cannot

make equal those pensions which are to be paid perpetually. It is doubted whether, if the thing does not yield fruit for certain years, according to the aforesaid bull, an integral pension should be due?

They deny that, according to chapter 22, number 82, and decree 390 from this bull of St. Pius, where it is prohibited to impose conditions directly or indirectly obligating to a pension in cases of fortuitous events upon him who otherwise would not be bound by the nature of the contract. But they probably affirm it, Lugo d. 27. n. 71. with Sot. Sa, Bonifacius, et Raynoldus apud consensum n. 7, modo compensetur pretium periculum hoc quod venditor in se suscipit. Reason, because it is licit to adjudge alongside a real census another contract of insurance, which in that case is virtually considered as appended.

The contract of this insurance, however, does not seem to be at all condemned by the bull, for the Pontiff there prohibits only contracts that are extraneous to the nature of the contract being celebrated. Although in such a contract the agreement to pay a pension, even in the case where the thing does not bear fruit, is not according to the nature of a censual contract, it is nevertheless according to the nature of another contract added by way of assurance, as will be said below regarding the contract: if part of the property should become unfruitful perpetually, then the full pension is not due even though the remaining part yields sufficient fruit for the pension. But to me it seems more probable that the decision made in a certain judgment of the Roman Rota (which is referred to by Lugo n. 405; this does not deny that it is probable), namely, that the entire pension should be due from the remaining part of the property unless its fruits are sufficient for the pension, and thus it holds according to Duard. Dubitatur 3.

If the special thing designated perishes, according to natural law the other goods of the vendor remain obligated in the hypothecary contract generally hypostatized; Habert affirms this in Tom. 4, p. 324, vers. True, and it seems that the cited bull of Nicholas V favors this, where it is granted permission to establish a census over a specific thing, and generally over all other goods sold by the vendor. But to me it seems more probable to deny this, as Azor says, p. 3, l. 42, c. 5, q. 5, and P. p. 595. Because, with the entire thing perishing, the entire census perishes as well, according to what was previously stated above in Dubia 4.

It does not hinder that in such a contract all the goods of the seller may be substituted: for this caution is effective solely to render secure the land from eviction, as Concina well says, namely, if he is burdened with other estates or fiduciary interests, etc.; but not that, if the estate perishes, the

census remains over other goods. And thus, says Azor, Bull. c. 4, q. 4, r. 4, ad constit. census sufficit designatio fundi vel plurium aliquot fundorum in aliqua via aut villa, quin necessaria sit designatio aliqui fundi in individuo, et testatur ita pluries decisum fuisse a Rota Romana ex Clericato in Decision. Miscell. Decision 73. number 8.

V. That the census-taker may not be deprived of selling or giving away the property. But if he wishes to sell, he must warn the census-taker whether he himself wishes to purchase at that same price; and therefore he should wait for a month: see 8 and 9. The precise bull states that it is licit to make a pact not to alienate the thing, Sal- mant. tr. 14. cap. 4. punct. 2. §. 4. num. 49. cum Sot.

Case number fifty and . VI. That another full pension or interest outside the ceasing extrinsically may not be established for a non-solved pension, namely, for example, if wheat was to be delivered at a time when it was worth two gold coins, and is returned at a time when it is worth one, as stated in n. 20. But the application of a full proportionate penalty is not illicit by natural law. §. 3. n. 38.

Item according to natural law, from the delay in solution, interest can properly be exacted; but from a bull issued for fraud against usurers, that cannot be deduced into a contract, as is taught by 2. c. 22. n. 85. Tamen in foro conscientiae debitorem tenet ad interesse etiam extrinsecum propter culpablem dilationem. VII. That a new census may not be created from unsatisfied pensions.

Whether, however, it is illicit according to natural law? Well said is Lugo, d. 27, n. 98, regarding this question to be suspended from another previously enunciated (see the aforementioned n. 846 verse). II. That is to say, whether it is permissible to establish a census from money due?

VIII. That the enumerator may never be able to repeat the price, and on the contrary the census-taker may always redeem the census, a denunciation shall be made every bi-monthly period. The agreement, however, by which the census cannot ever be redeemed by the censuator after compensation of the price, per se is not illicit, as stated in 2. c. 22. n. 36. and 14. c. 4. punct. 2. §. 3. n. 43., who say that this teaches all: just as the censuator can sell a fund or servitude over it perpetually, so too he has the right to the fruits thereof. And for the same reason it is also licit to establish a census with a pact such that it cannot be redeemed except within a certain time, as commonly taught by d. 9.

Sot. 1. 6. q. 5. art. 3. concl. 3. . 6. p. 24. §. 4. n. 4. et et Reb. contra aliquos: modo (intelligendum) pretium proportionate minuatur. Commonly also teach P. Concina and n. 44. with Lugo, Soto, that it is licit to make a pact such that the census not be redeemed by parts, but the whole at once: for it is just that as the buyer totaled up the entire sum; so too he should receive the whole at once. IX. That a census may not be sold for a greater or lesser price than it was initially constituted.

According to natural law, it is certain, as they say in n. 35, that a census cannot be considered liquidated by purchasing it for a lesser price than that initially established. And indeed, according to the attentive Bull, it seems most probable that this could happen, as stated in Article 3, Chapter 4, with reference to Bonaventure 848.—The question is raised: Whether this Bull of Saint Pius obliges one in conscience? Habert denies it, t. 4, p. 324, saying that the bull obligates only in places subject to the Apostolic See. Census, n. 3.

Mega 2. 2. l. 2. c. 7. q. 2. n. 57. They consider it probable itself Bonaventure and in the ninth tractate, book two, chapter six, section two, number four. Reason, because in the foresight of the internal conditions only those are required which by the law of nature are necessary for the composition of the census; but the bull is constituted to remove frauds; hence where there are no frauds, the bull does not oblige in conscience those who contract, but only the judges, lest a contract be admitted in the external forum. However, it is more probable that the aforementioned bull obligates even in internal forum.

Lugo, dated the 27th, number 83. Bonaventura, loco communi, num. 46. caput secundum, num. 400. et quarto, num. 3. cum Salonico. See what was said above at note 846. v. II.

That census 849. — It is asked: Whether the aforementioned bull obliges where it has not been received? They commonly deny chapter 6, conclusion 1, of decree 43. Mol. d. 395. num. 43. Lugo d. 27. n. 61. cum Sot. . And thus it should be feared, whatever they may say . n. 32.

Reason, because although it is more true that pontifical laces do not need the assent of subjects, as (contra c. et Cab. 4. de leg. n. 97. in fin. et 438. cum c. de leg. c. 4. punct. 7. §. 2. n. 406. cum Azor, Bon. Gratian item, caput 4, capitulum 46, numerus 9; decimum caput, pars prima, pagella 43, nomen 5 et caput ubi cum Cottius asserit certum esse quod lex adhuc ecclesiastica desinit obligare si per sola doctrinam non sit recepta ut pariter diximus in decimo libello numerus 439 cum Bussi. Bulla autem Sancti Pii non est recepta in duobus regnis Siciliae ut testantur caput

nomen 99. Salas apud . c. item Verde ultimo citato de Censura l. 3. n. 2389. cum Domino de Marinis, etc., nec est recepta in Libro 552, l. 4. Treatise 5.

Of the seventh precept of the Decalogue. Spain, as they say, neither in Belgium, 6. c. 6. n. 41. nor in Germany, as Habert and Tanner also state. Misunderstanding. Pirh. et 3. p. 2. n. 1010. neque in Gallia, ut Roma observatur, ait; Sed illo.

DOUBT X. What is a change? What is a change, and what kinds? Is a small change permissible? By letters? Real change? What about fictitious or dry change? Is it permissible to have a reciprocal exchange? What about the change from Frankfurt? 355 Is it permissible to expend adulterated money? 356 Is it permissible for a servant to earn wages by exchanging the master's money? 850. — R esp.

Cambium, quod permutationem significat, hic accipitur pro sola permutatione pecuniae. And it is a contract by which a camposor, willing to engage in cambium with a camposarius, exchanges money for money with some profit beyond the mere chance. And if it happens without usurious intention through just titles, such profits are estimable as good, manifestly not to be considered evil. Wherefore since there are four kinds of exchange, namely 4.

Minor exchange, or manual exchange, 2. Cambium per litteras, 3. Real change, 4. Dry cambium, or fictive cambium.

Regarding these matters, it is resolved: 854. — « 4. It is licit to engage in a small exchange, wherein lesser sums of money are given for greater ones, or contrariwise: because here there are just titles to some gain, namely labor and care in counting money, also diligence in acquiring all kinds of money so that one may be prepared with various fields; likewise purity of material and convenience, as when good and convenient gold, or other coin is given for small and inconvenient things. 3. t. 4. c. 49. n. 4. That is also permitted to those who do not have the office of changing [money]. . 14. c. 4. punct. 4. n. 8. cum . 852. — « 2. It is also licit to exchange by means of letters, provided that the abbot here receives the money, for example, from a monastery, and later sends it elsewhere by letter, for instance.

Frankfurt refunded through its factors; because these are also just titles, namely the virtual transfer of money and its assurance. For he does the same thing as if he were transferring the money of the monastery from

Francofurti without danger. However, nevertheless, the campanile should demand less than if it had actually transferred the money. c. Bon. d. 3. q. 5. p. 4. . In the Bull on Changes, for removing usury, it was decreed that time is not extended in the solution of the change, except to the first nundinas; and solutions are to be made where they have been determined, and according to the common taxation from one place to another. See n. 12. 853. — “3.”

It is licit to engage in a real exchange when the exchanger delivers money from his own storehouse, so that he may receive elsewhere from the exchanger those monies which the latter has elsewhere but needs now here. The title of this exchange is also a translation and assurance: for the exchanger makes good as if the absent money of the exchangers were here present, or, as others add, as if he bought the absent money with present money, which latter is certainly less valuable; 6 and 7. Bonaventura l.c. (Probabiliter ait Croix l. 3. p. 2. n. 1034. cum . et . 854. — « 4. It is illicit to engage in a fictitious or barren exchange, which is nothing other than a title for gain; for instance, as it is said.

Titius indigens pecuniis petit ut à campo sit sibi data 400. Camposr autem non aliter dat, nisi Francofurti vel alio loco distante solvendos petit, et pretium quod solet dari pro locis similibus petit ab eo. Therefore Titius receives [the money], yet truly he does not intend to repay in these places; rather perhaps he does not even possess a corresponding equivalent for this, and this is certain regarding the field: this contract is a fictitious exchange, and indeed a loan, consequently it is veiled usury. The term camposr will be excused if that profit demands the title of a ceasing profit.

Many things see » in Toledo. l. 5. c. 52. Good. D. 3. Q. 5. P. 4. Here is questioned whether it is lawful to engage in exchange with a counter-brokerage; commonly known as exchange with recourse (1). The case is: You receive one hundred nummi from the cambist at Naples to be paid in Sicily, but since you do not have either money or an agent there who will pay on your behalf, you ask the cambist to allow his resident agent in Sicily to act as your agent and pay the debt to him with exchange profit; the cambist writes to his agent, ordering him to act as your agent and make the exchange payment to himself with profit, and also to receive from him the debt as if he were acting on behalf of the cambist; but since you do not have money in Sicily, that agent writes back to the cambist, demanding that you pay the debt at Naples with additional exchange profit. 9 Theor. 3 c. 5 § 3 says this contract is probably lawful and cites Lugo. But such a contract is disapproved for merit, P. 549, n. 2.

Cabass. l. 6. c. 40. n. 7. et pr. c. 6. n. 44. qui ait saltem practice hoc esse

cambium siccum duplicatum: atque ego censeo etiam speculativè, cum verà in eo casu neque tu intendis pecuniam acceptam restituere, nisi Neapoli ubi accepsisti; neque contrà camposr intendit exigere pecuniam creditam, nisi Neapoli ubi tradidit, ut ita ex sua pecunia lucrum percipiat. In some inexplicable manner it can be excused on account of manifest laberius. "5. As regards the Frankfort exchange, in which merchants giving exchange for near market-days demand more when greater distances intervene; if therefore a greater sum is demanded precisely because the solution is deferred longer, usury is involved; but if on account of some other just title, for instance one of ceased losses, since money of merchants is an instrument of gain, and if they lack it long, their loss of profit increases, and the longer the time is, the more they will demand as exchange, then such increase in the value of money is just. l. c. n. 9. ex Mol. . (I consider this cambium licitum, provided that the promisor truly consents to be interested.

But solely the delay in the solution will not certainly be a just cause for increasing the price, as rightly notes P. Cone, t. 7, p. 557, n. 2.) 855. — « 6. Whoever, through changing or receiving, takes possession of adulterine money, whether through ignorance or inadvertence, cannot expend it: because a thing that is vitiated cannot be transferred to another person without the vice being detected, as was said above concerning the seller. Nor can he deceive others because he himself has been deceived, since the action in which he was deceived does not confer any right upon him to do this. Bonac. d. 3.

» Q. 5. P. 1. ex Az. . Sed alii distinguunt: Si moneta non sit materialiter falsa, nam si impressa sit signo principis et materia sit bona, et eadem ponderis, poteris expendere eam cum nullum alteri inferes damnum; ita pr. c. 5. n. 30. et Croix lib. 3. p. 2. n. 960. If, however, counterfeit money is also materially false, then certainly you cannot use it. It is doubted, whether if you expend it in good faith, you would be bound to restore it? They deny it, Sylvester and tractate 6, question 3.

But more truly do they affirm who say that all agree in this. Reason, because then to restitution according to the very contract by which you are bound to pay just price for the thing bought; but when you give lead money for silver, you pay a most unjust price. 856. — Whether a servant receiving gold money from his master, in order to satisfy the creditors of his master, can profit by exchanging that with copper? It is affirmed because it is a fruit of industry, unless it be contrary to the expressed or tacit will of the master. 14. c. 4. punct. 1. n. 7. cum Lug. DUBIUM XI. What is the nature of locatio et conductio. 587 See discourse on the cause at Busen. 588 When can the locator expel the conductor before the time

specified has been fulfilled? 589 Can the successor of the locator expel the conductor? 590 Is it due to reason of the one who establishes it for utility's sake? 81 Is it permitted to a poor person to lie in wait for alms? 862 If a messenger setting out for the same place accepts double pay, has he suffered duplicity in wages? 88 When bound by obligation to make improvements, should the conductor do so at his own expense? 89 Should salary be given to the farmer working on the land?

And concerning the expenses of care? 857. — « Resp. It is a contract by which one grants to another for a certain time the use or enjoyment of his person, or some other movable or immovable thing, at a fixed price, or with a stipulated wage or pension. Houses are conceded for use, e.g., spoken-out houses, horses, servants, etc.; things to be enjoyed are conceded, such as spoken-out cows, goats, fields, orchards, etc. » Hence, considering the nature of this contract and its legal dispensation, the following cases are resolved: « 4. If the thing conveyed by location perishes before the transfer, the contract is dissolved, and the conveyer is released (4). « 2.

If, without fault on the part of the contractor, the use or fruit of the thing ceases, for example, because the house is falling into ruin, is haunted by specters, or due to a danger from pestilence (unless custom be otherwise), or because it fails to provide habitation in time of war or plague, he is released. The contractor is to be released from the lodging for a time, wherein he cannot inhabit, or use and enjoy the thing conducted; see at ap. . 3. t. 4. c. 23. . 2. c. 24. d. 2. etc. (2). « 3. A laboratorio conducto non debetur stipendium temporis notabilis, quo aeger decubuit; nec aegro, nisi expensa modicae: nisi tamen aliter sit conventum, aut consuetudo ferat. See S. Th., v.

Conductio. "(See no. 864.) Because of slight damage or misfortune, nothing is remitted from the pension to the tenant: otherwise, if there be great calamity." And yet if the fertility of either preceding or following years should compensate for the damage, it is not remitted. . 2. c. 24. d. 4. » (See no. 860.) (3). (1) Art. 1741.

A contract is not valid if the thing placed suffers damage, or if the parties neglected to protect themselves with their own means. (2) Art. 1721. If the thing is rendered unusable by defects, the locator is held responsible for these and even for damages ensuing therefrom, although he may have been unaware of the defective nature of the thing. Article 1722. If during the lease the thing as a whole perishes through an accidental fortuity, the contract ipso jure is rescinded; if it perish in part from one side, the conductor may either dissolve the contract or claim diminution of price,

but not compensation for damage.

Art. 1724. The conductor may petition for the rescission of the contract if he is unable to live in his home due to reparations made; nevertheless, he is not permitted to seek compensation for damages. (3) Art. 1723. If the hiring for several years and the entire harvest or half thereof perishes by an accidental casualty, the conductor may demand a reduction in proportion to the damage, unless the fertility of the preceding years suffices to enjoy the benefit. • 5. If through the clemency of heaven (otherwise if through the industry of the cultivator) more abundant fruits from the cultivated field come forth in several years, it may be that the pension of the tenant be increased. • 6.

To incur expenses for the maintenance of things that are durable, such as preserving roof tiles, paying taxes, and rendering public burdens, regards either the lessee or the lord; unless otherwise agreed upon or custom permits. c. n. 4. • 7. If the conductor has made necessary or useful expenses in regard to the managed affair, he can deduct them from the pension, or recover them from the locator, and while they are not paid, retain the managed affair. . c. Mol. d. 496. (4). Even though a fire usually happens through the fault of the inhabitant, and thus in doubt it is presumed against them, yet often this comes about through the fault of the servants, whom the head of the household is not compelled to provide for, hence the manager must be absolved unless the locator shows culpability. See . 6. t. 7. r. 31. where Haun. and Ber. teach that if an accident occurs due to the culpable action of a certain individual from a family who has failed in his duty regarding some office, for example, the custodian of the stable who has negligently guarded the light therein, the father of the family (unless this servant has been faithful and diligent) is liable for the damage: according to one view, if it is due to another's culpability; or if it is not certain whether the accident occurred by chance or through someone's culpability.

If the master of the household, for instance, wishes to emigrate before time, that same thing is permitted and can be entrusted to another: nevertheless, as regards maintenance nothing is remitted to him (3). Art. 1770. If the conductio be but for one year and at least half a month, the conductor can demand immediately a diminution of price: but he will obtain none if the loss be less than half the fruits. Article 1771. Neither if the fruits, after having been separated from the soil, perish.

Art. 1772. In the contract it is stipulated that, even in cases of fortuity, the conductor is bound; Art. 1773. Namely concerning hail, lightning, frost, or dew, but not regarding extraordinary accidental cases. (1) Art. 1720. The

lessor will deliver a well-fenced and roofed place, and during the tenancy he will cause all necessary repairs to be made; Art. 1754.

But a conductor is bound to make minor repairs (gall. locutices), unless there is a contrary agreement; Art. 1755. And now, if age or a stronger force has not given him permission for that place. (2) Art. 1752. The conductor is bound with regard to things that have been lost or deteriorated, and he must prove that this has happened without his fault. Article 1733.

It is held responsible for fire, unless that case be considered one of fortuitous accident, or of a stronger force, or of having obtained it by fraud, or because of a neighboring house. Art. 1734. If there are more than one conductor, all are jointly liable for the fire, unless they prove that it originated neither from another nor from themselves. Art. 1735.

The conductor is liable for depravations and damages that have occurred in the matter through the fault of subordinates or another to whom he himself had entrusted the thing. (3) Art. 1717. The conductor always has the right to have another person take over the conduct, or even to entirely transfer it, provided that this is not prohibited. Article 1763. He who has conducted fields under the condition that fruits be shared with the lord according to a fixed ratio, Chapter 3.

Of contracts. Dub. 44. 858. — "40. The locator cannot deprive an unwilling conductor of control over a conveyance before a predetermined time, except in these cases: 4. If he does not pay the pension; nevertheless, he should wait two years, if after two years matters have been concluded. 2.

If an unforeseen case occurs on account of which the house or its necessities are necessary to the master himself. 3. If it is necessary to repair a rented property, • another inhabitant cannot do so. 4. If the conductor in the matter conducted himself badly, for example, by destroying or abusing it, such as nourishing and maintaining prostitutes there, 9 (4). 41. — The universal successor, or heir, cannot expel the conductor before the completion of time: but a partial successor, whether purchaser, donor, legatee, etc., is not bound to stand by the contract of leasing, nor is he bound as conductor; unless perhaps otherwise the agreement stipulates, for instance, that the leased thing not be alienated during the time of the lease. See 2. cap. 24. and 3. t. 4. c. 22. (2). 859.

It is common and certain with Bus. as mentioned above, that the universal

successor cannot expel the conductor, as commonly say Lugo on the 29th day, number 46, and previously in chapter 7, number 32, along with others, according to law. Way 40. concerning the location. It is also certain and common that a particular successor can expel him, like a purchaser, executor, etc., according to the law. Buyer, cf. same title.

In such a case, however, the landlord has an action for the interest against the tenant or his heir, according to the law. If wages are due, according to section 25. According to the laws of the fund 25. concerning the lessee. They nevertheless receive . and Croix l. 3. p. 2. n. 1047. if the field had already been cultivated or sown by the tenant; because (as they say) justice does not permit that the tenant should bear that loss. But I say that this exception is contrary to the express sanction of the law, since according to the aforementioned texts a particular successor may neither lease nor transfer the holding unless there be a contrary stipulation. (1) Art. 1729.

The locator can petition for rescission of the contract if the conductor, in a manner contrary to the nature intended, has placed the locant in perilous or different danger from that designated. Art. 1741. The contract is dissolved if the locator and the conductor have not fulfilled their obligations. Art. 1752.

The conductor who does not bring the necessary furniture to the house may be expelled, unless he provides security. Art. 1766. A contract may be rescinded if the rustic conductor does not place in it the necessary animals or instruments and utensils, if it does not yield produce or yields it badly, if it uses something different from what was destined for it, etc. Art. 1761. The party who has entered into the contract may not rescind it, so as to inhabit the house himself, unless such an agreement has been previously made.

Article 1760. If through the fault of the lessee the lord is ejected from the contract, he will have to pay the price necessary for a new lease by reason of time and will also compensate for damages. (2) Art. 1742. The contract of location is not dissolved by the death of the locator or the conductor. Art. 1743.

If the locator has sold the thing located, the purchaser cannot drive out the conductor; Art. 1744. If, however, the contrary had been stipulated in the contract, the locator would compensate the driver. Article 1748. That is, if the buyer wishes and can expel the driver, he will at least give him notice on this matter for a time, namely one year, when dealing with the predecessor.

Digitized by Google the right to a certain expulsion of colonists: on the contrary, I do not see how justice is injured, when the colonist already has an action against the lessee or his heir for recovering damages; for it is expressly stated in cited §. It says there: And this damage (that is, resulting from the expulsion) pertains to the heir. It must be noted here, that a minor is bound to abide by the lease of his curator: the beneficiary, of his predecessor: and the wife by the lease of her husband. See Croix lib. 3. p. 2. n. 1047. (1). 860. — Whether on account of sterility the colon may seek remission of the pension? According to the law of nature, sterility per se regards the administrator; yet, by reason of equity introduced into the law, if the damage be great, something is to be remitted; unless sterility is compensated by the fertility of other years, as provided in the 8th Law concerning location and in the chapter On sterility, where Gregory IX in one of his Extravagants thus decreed: On account of sterility affecting the administrator with great inconvenience, without fault on the part of the colonist or a fortuitous event, a proportionate remission of pension is to be made to the colonists of the Church; unless sterility can be compensated by the fertility of preceding or subsequent years.

Hence, if no fruits are received, no pension is due, as taught by Lug. d. 29 n. 40. ex l. If wages. §. Greater violence. ff. De localitate. If however some fruits are received, they say 2. c. 24. n. 17. and the same Lugo n. 43. with Cov. Bartolo, et aliis, tunc Antium remissionem esse faciendam, quando deductis semine et expensis non supersit quod sufficiat saltem ad solvendam dimidiam pensionem.

Reformation putat Croix lib. 3. p. 2. n. 4049. cum . 861. — Whether it is licit for a poor person to speak the right of alms? They affirm in book 1, chapter 7, question 2, with Henry and precedent number 23. Because from one aspect the contract is just, when on both sides the fortune of earning and losing is equal; and from another aspect this would be the same as if the poor man mediate through another were to beg alms. But rightly do they deny this on the day of Lugo, number 9, with paragraph 2, note 1044.

Reason, because although this contract is just between the lessor and the lessee, it is nevertheless unjust with regard to those who give alms charitably, who wish to give only to the poor, not to the lessee, who is not considered poor, as is supposed. Nor is it valid to say that faithful intermediaries give alms mediately. Contractus, quem ipse maritus bona resaris pro spatio novem annorum excedente locavit, dissoluti communitatis, uxorem ejusque heredes tantum ad tempus residuum periodi primi, secundi, etc., currentis obligat, ita ut conductori sit periodo novem annorum, qui vivit, adhuc possit frui. Art. 1490.

A contract for a space of nine years or less, which the husband himself has let out with regard to his wife's goods more than three years before the end of the current lease, if it concerns a piece of property, and more than two years, if it concerns a house, he has let out or re-let it, does not oblige him after the dissolution of the community, unless it could be commanded to be executed before the dissolution; for well responds Croix that according to the law of purchase one petitions no longer in the name of a pauper but in his own name: and therefore neither mediately nor immediately alms are given to such a pauper. But I would say otherwise, if the poor man could not petition for himself: because in this case, although the alms do not yet reach the dominion of the poor at this very moment, they are nevertheless beneficial, so that his support might be thus secured; otherwise, it would not be found who would circumvent those places on behalf of that poor man, and thus the poor man would remain destitute. 862. — Ques. 3. Whether a messenger departing for the same place may lawfully receive double pay from two sources? Of drivers it is said by P. P. 632: there is no difficulty because they can, since such is the custom. But regarding the messenger, he thinks it equitable that he should demand only half the wage from the second conductor.

And this seems sufficiently probable, since in that case the work of that [first] driver for the journey which does not receive the grace of that second driver does not seem to be worth as much as it would be worth if he undertook the journey solely for that purpose. However, it is also sufficiently probable that he may demand the whole reward, as held in 2. c. 24. n. 28. according to common opinion, as Concina asserts, and Croix considers it probable in l. 3. p. 2. Reason, because by chance it stands so that its works are useful for two; but in itself it demands just remuneration from each one, since it binds each one to perform that journey according to justice; and if it does not perform it, it sins indeed against the justice of both parties. See what is said about Cambio n. 853. at the end. 863. — Question 4: whether a conductor bound to improvements should carry them out at his own expense?

Nagant d. 29. num. 69. But more correctly does Lug. himself affirm ibid., with Lop. and Croix lib. 3, p. 2, n. 1053, namely, that when one binds oneself to do something, per se he is considered bound to do it at his own expense; just as if someone binds himself to pay the rent for a tenant's house, he is indeed obligated to incur expenses so that the payment is made there. Understand, nevertheless, that in a rental contract something is detracted from the ordinary pension; since this burden of improvements is alien to the nature of the transaction. However, moderate and ordinary expenses incurred in carrying out the matter regularly pertain to the

conductor; extraordinary ones, however, pertain to the locator, as Croix l.c. n. 1052. cum. 864. — Ques. 5. whether pension should be due to a servant conducted for a year's service if he is ill for some months, perhaps per trimester?

Saint Anthony affirms it, volume 3, page 2, number 1050. But the common opinion more truly denies it, as Lugo says on the 29th day, number 58, and Croix at the same place near the end with Mol., because concerning justice no salary is owed for service not rendered. Azorius, however, in n. 60., thinks that at least the lord is to be held bound to provide food for the servant and necessary expenses for his care. However, they better say that.

Rebels and others say with Lugo: indeed, not without reason he says that the lord is not obligated to provide food for the servant and necessary expenses for his care, except perhaps sometimes out of charity, namely in a case where the servant would be gravely in need. Bene tamen excipit . 3. r. 2. nisi alicubi esset consuetudo, ut domini teneantur ad totum stipendium, si famulus, ad annum conductus, per aliquot dies agrotet. Emphyteusi est contractus similis locationi, in quo res immobilis, quae cultura possit effici melius, conceditur alteri, vel in perpetuum, vel non brevius saltem quam ad decennium; ita ut dominium ejus directum et possessio civilis maneat apud dominum, qui tradidit in emphyteusi; dominium autem utilitativum transferatur in emphyteutam cum hoc onere, ut quotannis certum canonem, vel pensionem domino, solvat, quam si totam solvere neglexerit: 26 annis continuis in emphyteusi ecclesiastica (cum res sit Ecclesiae, vel pii loci), vel in saeculari 36 annis, incidat ipso jure in poenam commissi, ut dominus eum expellere possit; etiam auctoritate propriá, ut multi cum n. 4. et 6. sed. See Croix l. 3. p. 2. n. 4062., quod licet de solutione interpellatus non fuerit: nam tamen dicunt t. 7. r. 36., si per 30 vel 40 annos non solverit, eum praescribere immunitatem in futurum; id tamen Wesemb. et alii 5 negant, vide loc. cit.

Moreover, what the law is in this contract depends on the custom of the places, which varies, and on the very agreement of the contracting parties, which should be conceived in a written instrument so that it may be valid. See Book 3, Title 4, Chapter 23; Book 2, Title 2, Decree 9 - 866: Whether an emphyteuta should receive a pension when suffering great yield loss? He says . 33. d. 9. p. 7. n. 5. concerning the rigor of law and custom, that the entire pension is to be paid, according to l. 4. c. de jure emphyt., where it is decreed that, while the pasturage remains in part, the pension is to be sold. However, chapter 24, numbers 49 and 50, and Lugo, day 29, note 88, rightly understand this law to mean that when the pension is small in relation to the fruits, it is more given in recognition of the direct lord, than for compensating the fruits.

Accordingly, however, if it is great and nearly equal to the fruits, for then it should be diminished according to equity, or reduced by reason of the death of the part of the land, or because of approaching sterility. Whether, however, the emphyteutic enjoys privileges which the direct lord had in the thing itself? They affirm page three, paragraph two, number one thousand sixty-four. But they deny it probably.

Reason, because when the useful dominion over the thing is transferred to the emphyteutic, the thing itself becomes its own; hence, if indeed he himself is a layman, he cannot rejoice in the privileges of the Church to which direct dominion pertains. 867. — « Resp. 2. A feudum est contractus similis emphyteusi, quo immobilis res alicui conceditur cum translatione dominii utilis, proprietate retentâ, sub onere non quidem aliquid solvendi, sed exhibendi fidelitatem et obsequium personale directo domino. If, however, the vassal does not perform this (for it is called the acceptor of the feeu), he loses the feeu. Sometimes also something must be rendered in recognition of the direct lordship, but then from that part it ceases to be a pure fee, and inclines towards emphyteusis: as for what the law is concerning fees, it likewise depends on local custom: those which are common laws depend upon them.

See loc. cit. 868. — "Resp. 3. A libellatic contract, or a donation to a libellum, is called, when an emphyteuta or feudatarius receives that thing which he has taken in feudum or emphyteusim, by a similar contract he hands it over to a third party (for which reason, if this be done within a decade, the consent of the lord is required): so that it may be as it were a subfeud and a subemphyteusis. Ita 4. n. 6. (4). XIII DUBIUM. Quid sit sponso et ludus? Quid est sponso et an sit licita? An liceat spondere circa peccatum committendum? Quid ludus et quando licitus? An sit restituendum lucratum d filiofam aut religioso? Quid, si religiosus ludat illiciti per licentiam generalem? An religiosus possit plus lucrari quidm perdere? An si expernat majorem summam quidm possit tenentur restituere lucratum? Quantum filiusfamilias possit expernere ludo? Quando ludens cum deceptione tenentur restituere? An valeat sponsio, si unus spondeat majorem summam quidm alter? An si unus rem certò sciat et manifestet? An cogens alterum ad ludendum possit retinere lucratum? An tenentur restituere praesciens se victurum ob suam peritiam? An qui utitur astutii licitis? What if he uses what is illicit, and how much ought he then to restore?

Is it licit to play with sacred prayers? It is about the forbidden game. What are the laws that prohibit this game? Evident is, a contract libellaticum, feudum et emphyteusim non novi sed antiqui juris esse. Does the laity sin

gravely by playing at this game for profit? Can the victor of a forbidden game retain the gain? What if he impedes the judge so as not to be condemned himself? And whether he who is questioned by a judge about a certain matter be bound to answer truthfully? Whether he can retain the gain if he played with the intention of recovering it? Whether the vanquished be bound to restore the debt? What if both have renounced the law? And whether the vanquished may petition for the relaxation of his oath? Whether the vanquished can compensate himself for the discharge? Whether he can compromise, if it is threatened that he will be sued again in judgment? Concerning clerics; which clerics are comprehended? Whether certain clerics sin gravely by frequently playing and in great quantity? Whether, if only frequently? Whether, if only in great quantity? When do they not sin either gravely or lightly? Whether these things proceed in every game of cards? Regarding religious individuals; whether and how religious individuals will sin by playing this game of chance? 902 IV.

Regarding bishops, how do they themselves sin in this? Whether clerics and religious assisting at these games sin gravely? 869. — « Resp. A sponsio est contractus, in quo duo de veritate aut eventu alicujus rei certantes sibi invicem aliquid spondent, ut id ejus sit qui veritatem assecutus fuerit; v.g. certo tecum Imperialibus hanc vel istam civitatem obsessam, captam, etc. Ut licite fiat, requiratur 4. ut fiat super re dubia. 2. That equality may be in the thing which is promised, with equal uncertainty. Equality is present then when the thing promised is proportionate to the probability of the other party.

Lugo d. 34. num. 77.) » 3. A doubtful outcome in both cases. 4. That each may receive that about which there is dispute in the same sense. Molin. d. 36, sect.

6. (4). But it is questioned whether these promises, commonly called Scombesse (2), are licit. The Saint denies this in Title 1, Chapter 23, §9. Syllogismus. Ne gotium, q. 4. in fine et pag. 608. n. 21. cum l. 44. c. 49. dub. 4. lib. 4. c. 8. dub. 32. n. 2. Lugdunensis, Decretum, Distinctio 34, Materia 73, Capitulum 10, in fine, caput 3, quaestio 4.

Wigandt tr. 8. ex 4. q. 20. r. 2. punct. 3. n. 64. cum aliis pluribus. Reason, because this is a contract of fortune, by which each sponsor— (1) Art. 1963. No action is given from Judas and the traitor. Article 1966.

Pedestrian courses, equestrian courses, chariot races, games with a ball, and other similar things are permitted which render the body fit for military exercises. Art. 1967. It cannot be repeated what has been

spontaneously dissolved unless frauds and fallacies intervene. (2) That is: gall. gageure; germ. Honey.

It will be. The tooth is exposed to an equal danger of loss and gain. It is not true that laws prohibit sponsions, unless they concern bodily contests, causes of hatred, lust, and similar matters: rather, other sponsions are more appropriately approved, as in l. If anyone from the laws concerning verbal obligations and l. If witness.

I consider this judgment to be in itself true, because a promise in itself is an indifferent matter. However, individually (since according to my opinion an indifferent act will not be permitted), I regularly hold that such sponsions are not excused by a venial sin, because in them there is lacking a motive of honor consonant with licit recreations, just as it exists in an honest game. And thus it seems that St. Ant. understands such profit to be base, inasmuch as it serves no useful purpose but rather idleness and prodigality. But no one doubts that sponsiones regarding a diaper or drink are to be reproved; see Lugo l. c. Thus by the bull of Pius V.

In matters of election, prohibitions exist concerning sponsiones regarding a doubtful choice of the Pontiff, whether concerning his life or death, as Azor states in lib. 20, dist. 4. Item testifies Rone. l. c. q. 2. r. 2. Gregorius XIV., per aliam bullam, quae incipit: Cogit nos, ampliasse praefatam bullam Pii etiam ad electiones Cardin- lium, et adhuc extra Urbem sub excommunicatione latae sententiae, Papae reservata respectu ad electionem Pontificis; et respectu aliarum sponsionum ipsae annullantur in utroque foro, adeo ut quisque teneatur ad restitutionem ante omnem sententiam. Thus likewise, as is attested by c. n. 4, are prohibited the sponsiones of the Scholastics of Salamanca concerning elections to cathedras. Whether it is licit to make a promise regarding a sin that is about to be committed is doubted.

Lug. distinguishes well in d. 34, n. 75. Si sponsio est de peccato patrandi ab alio tertio, illicita est, si spondens optet peccatum, vel opem ferat ad peccatum committendum. Thus Lugo loc. cit. and cap. 6. They nevertheless arrive at the same conclusion: Lugo, namely, that in such a case, if one opts for a sin, he would indeed commit a sin, but is not bound to make restitution, because he harms the virtue which he seeks to harm, but does not harm justice.

Si vero sponsio est de peccato patrando a uno ipsorum spon- dentium, licita erit, si tu v.g. sponderes alterum commissurum fore peccatum, quia tunc sponsio eum avertit a peccato: secus, si sponde- res te commissurum peccatum, aut alterum non commissurum; quia tunc sponsio ad

peccandum induceret. But he doubts whether in this case, where you would thus illicitly have given a pledge, you would be bound to make restitution? Right they deny it in number 75 of Lugo. Azor, about year 49, December 6, and question 2, response 4.

Reason, because although by promising pecuniary compensation for a sin one does not thereby achieve justice, since then you will not receive the price for the committed sin, but rather for an event already accomplished according to the pact of the promise. And in this also agrees St. Anthony, loc. cit., where he says: "Nevertheless, it is not necessary to restore; but it should be given to the poor out of counsel rather than by precept." 874. — "But a game is a contract by which those who play with each other are reconciled, yielding to the victor, each having laid down what he had." These contracts are licit according to the law of nature, provided that the proper conditions be absent, and further that no scandal intervene, nor a just prohibition, nor iniquity mix itself therein, nor become an occasion of sin: for as any man is lord of his own property and can absolutely give it away to another, so too he can give it under some condition, whether fortuitous or dependent on his industry. d. 1. Bon. d. 2. - q. 3. « 1.

He who is not the master of a thing cannot alienate it, and neither can he play with it or dispose of it. And thus he who had gained by gaming from a religious person and from one who is not able to alienate as a member of the family should restore it. 3. t. 4. cap. 21. num. 5. 872. — That which one gains in gaming from a wife or a religious person, he ought to restore, unless it be from camp property, etc., or unless the game be moderate according to propriety; or there be tacit permission of the parents. c. 4. punct. 3. n. 54. The same should be said about the wife and the religious person, as Lug says. Mol. Azor, when point 8, number 94.

This nevertheless is not understood to refer to illicit games forbidden by law, rule, or prelate, such as dice and board games, and consequently every fortuitous game, unless it be in a small quantity and in those religious orders where use is permitted for recreation; see n. 95 with ibid., from Lugo, and more fully below on this point num. 904, where also the matter of quantity will be treated, which others may expose to religious games. Hence it is asked: 4) if a religious person, having obtained permission from the prelate to expend a certain sum, expends it in illicit uses, such as in forbidden games or with prostitutes, etc., whether then he sins against the vow of poverty, and both he who spends and he who receives are bound to restore it to the monastery. The first proposition, with reference to point 7, n. 85, etc., affirms: The reason is because such a license from the superior neither can be presumed as given nor could it be given, since he himself is not a master but merely a simple administrator

of the monastery's goods. The second sentiment, however, which is held by many eminent authors, as . n. 84., to which Croix l. 4. n. 144. seems to adhere, holds that neither then does the religious sin against his vow, nor is restitution due to the monastery either from himself or from the recipient. The reason for this, as Croix says, is that such permission is held to be given, not by the prelate administrator, but by the religious domina; and although in regard to manner she may be unwilling, yet not so far as regards substance; and religion is presumed (as Rebell says) frequently to consent to her, lest the reputation of the subjects or superior be endangered: because in such a case the superior removes from herself an obstacle as much as possible; and therefore, since she grants permission universally, it should not be believed that she limits it only to licit uses, as Croix, Lugo, and others say.

But notwithstanding these things, I hold the first opinion to be absolutely more probable. See what is more fully said in lib. 5, num. 34, 874. — Question 2: whether a religious person can profit more from play than he can lose? Distinguish: Whether through the same bet (for example, exposing five silver coins), equal sums may be won from four persons; or whether the game does not morally interrupt itself; because then, just as one could lose money already gained along with his exposed property, so he can also properly gain more than double his exposed money, at least up to twice his exposed amount. etc. with . punct. 8. n. 97. If however the game is morally interrupted, or if the players are altogether different, he cannot expose the earned money entirely, because that money is not his own, but belongs to the monastery.

They nevertheless concede, with Lugo and Villal, that a game may not be interrupted if one player from among many is substituted for another in the same kind of game; or if on another day, for the sake of urbanity, it is played again with the same participants. The same is taught regarding household servants in book 7, chapter 8, question 8, note 2: similarly Rebellius says at 875. — Question None, whether a religious person who exposes himself to a greater loss than he can bear without permission is bound to restore the amount of profit won by one venture above that which he could lose? They deny. Arm.

Grave. December chapter seven, canon forty-nine, note eighty-five. The reason for this is that a contract sometimes can be valid on one side and invalid on the other, as in contracts with a minor and the Church without solemnity of initiation; according to l. Julianus, § If any, laws from the twelfth question, chapter two.

Though he calls this opinion far more probable which is opposed to it, yet

he thinks it probable: but I find no probability in the reason adduced; for in the brought forward equality the law supposes a presence of equality in the contract, and grants favor only with respect to the deficiency of solemnities both to the Church and pupillo; whereas in our case there is a lack of equality and justice in the contract, which I know not how the law can favor, since it is in substance unjust. Hence I adhere to the secondary opinion held by points 8, n. 98, namely, that it is unjust to engage in trade with such an unequal and unjust contract. And this agrees with the doctrine of Molina, 3rd part, 2nd section, n. 1079, who rightly say that if someone profits by exposing to a game money stolen, from which he has nothing else to offer besides it, then he is bound to restore the profit because there was no contract when he exposed the money, which the confederate could not acquire. They nevertheless say and Sair.

II. According to Sanch: n. 87. If another player knows that a religious person or a son of a family is unable to expose that quantity, then he can claim nothing in return; because to one who consents no injury is done. But this they deny more truly, according to Salas apud Lugo d. 31. n. 59. and with Soto, Lop. However, it is rightly admitted that if the conspirator himself does not play with the intention of gain, but for the sake of recreation, it would not be a matter of great moment, as even the subditor says . 876. — « 2. If however the son of the family (and the same applies to the religious, loc. cit., d. 4), is kept in a distant place by the parents, he may moderately take something from the provisions for an honest game, e.g., 5 out of 400, because such is commonly presumed to be the will of the parents, as stated by Soto, loc. cit., 4.

3. p. 2. num. 40. et seq. It is, however, probable that the younger and very learned ones felt as I did, namely, that in such a case, if the fils de famille does not wish to resolve the lost game, he lawfully can oppose an exception, and is not bound to resolve it, reserving something from the alimenta. Whether, however, the fils-familiae can expose once what he can lose throughout the year? Some deny it, but more probably they affirm it.

Nor is the victor then bound to inquire whether the son can expose that large sum or not, unless he knows what this one usually plays with others. Thus. p. 2. n. 4073. 877. — « 3. He is bound to restore who has conquered by violating the conditions of the game through deceit and trickery; or by fraud and injury, he has drawn another to play; for example, if he pretended to be completely ignorant of the game, and thus induced another, who otherwise would not have wished to play, to play much more ignorantly; or if he neglected certain precautions against which the other had consented not to conspire in the game, otherwise he would not have consented. Mol. d. 517. . c. Bon. d. 2. q. 3. p. 2. n. 3. 878. — « 4.

If in the thing promised there is inequality, and this is known to the other party (for example, if one's money is greater), and he who is ignorant thereof promises, the contract may be valid probabilius; because to him who knows and consents no injury is done, as they say. Lugo d. 31. sect. 6. n. 81. ex Molin. quia non est aequalis conditio utriusque, et alter nulli se exponit periculo. See Azor p. 5. Book 5, Chapter 25, Question 7.

Bon. d. 5. q. 3. p. 2. q. 36. n. 3. Dungeons of play, » dub. 43. n. 3. Broom and Cardinal. Lugdunensis loco citato Caput 3.

On contracts. Dub. 43. 879. — Whether a suretyship is valid if someone clearly states that he certainly knows something, and yet another persists in his suretyship despite this? The first opinion agrees with point 4, paragraph 3, number 64, and in the same place. But the second opinion is much more probable to me than what Lugo holds in day 34, number 83, and Croix in book 4, number 4068, namely that a contract does not exist; just as if someone pertinaciously wished to buy a false gem as if it were true. Then indeed, although the seller manifests to him the truth, if nevertheless he purchases as true what is false, the purchase is still null, since there intervenes no other contract than that of sale; and the purchaser does not intend to transfer the dominion of his money to another title, except through sale; which being unjust in substance is null.

It is objected 4. Si ille qui à principio certus videbatur de aliqua re, postea, altero contradicente, ac spondêre volente, incipiat dubitare, advertens jam alias se deceptum apprehendisse, etiam in iis quæ sibi certa apparebant; tunc enim poterit hoc rari. Thus Lugo num. 79. cap. 40. in fin. . c. 3. q. 2. r. 2. n. 446. cum Mol. Furthermore, I would accept this: if the sponsor, having been deceived, holds his assertion to be doubtful, because then he willingly seeks destruction; for when he believes something to be certain which he himself asserts, then he promises not because he wishes to yield to his right, but because he is deceived, whence he does not have the will to destroy. But when another reveals his own assertion as certain, and he himself begins to doubt his assertion yet obstinately continues to promise, then his deception ceases, and he truly seeks destruction, insofar as the matter stands with the other party's assertion.

Thus if the seller had asserted the gem to be false, and the buyer, already doubting, wishes to give more in exchange, even though it is subsequently discovered to be false, the seller can properly retain that price. - 5. Per se autem, et jure naturae licita est etiam sponsio de futuro - eventu, qui damnum proximi conjunctum habet, v.g. If Peter is to die within a year (even though there may be an opportunity for desiring or plotting his

death, that is, by chance; and this same danger can be considered in a perpetual life assessment): nevertheless, it is often prohibited by human law. C. Lugol. - c. n. 74. - 6.

Even though a promise with an illicit condition, for example, one to give more than one is able to give, is illicit because it leads to sin; yet you have gained from that, and therefore you are not entitled to refuse to restore what you have received. . 9. r. 69. 880. — 7. It is probable that Molina teaches, namely, if one has been induced to play for the sake of jest with a lesser or more serious reproach, and has lost, he should not be held to restore the victor, because such a person played entirely voluntarily. Bonaventura, ibid., according to Molina and Garcia against Azor, etc., commonly holds. It is therefore inquired whether, if one is coerced unjustly to play, he can subsequently retain what he has won?

The first opinion denies this, because damage resulting from an injury must absolutely be restored. Thus it is said in the second part, question twenty-six, number nine, who calls it communem cum Malder, third part, page two, note one thousand eighty. The second opinion, however, which Molina holds in decision 516, chapter 8, and which Lessius and Busembach consider probable as stated above, affirms that it can be retained, because then it was not coercion or play, but rather a case or lack of skill that caused the damage; for if, they say, this coercer were to lose, he would certainly have to compensate, and another could retain it, as commonly taught in the aforementioned place. St. Thomas.

Saint Anthony. This opinion, speaking per se, seems more probable to me (unless a coercer compelled it, surpassing one coerced in the expertise of gaming, for in that case I feel bound to restore at least part of the gain according to the measure of expertise by which he would have excelled another). The reason is that the contract, despite the fear of injury instilled, was sufficiently voluntary on both sides and valid, according to the common opinion related to n. 717. Neither does it hinder to say with chapter 10, number 5, that in that case one is held compelled to make restitution because it would be a cause of damage, since from his own injury another suffers harm. For it is responded according to D. Thomae 2-2, q. 62, art. 7, whose words we have reported in n. 562. v.

Secondly, that the one who inflicts injury is then bound to restitution when the injury itself is conjoined with damage; but in our case damage is not annexed to the injury per se, since he who suffered fear, as much as he lost, could equally have gained; therefore damage does not proceed from the injury, or from the fear instilled, but from misfortune and chance. I spoke per se, for if one who has suffered fear seeks restitution of lost

money, it is rightly taught that a useless fear should be held as gainful to restore, according to what was said n. 717. v. He asks. 2. What, however, if he be constrained solely by importunate prayers? Sylv. apud Croix ibid., they still hold that it is not possible to retain it.

But much more probablistically they contradict when they say: What if he should compel the one who has unjustly overcome to further play, and afterwards overcome another beyond the previous loss, can he retain it? Croix negat l. 3, p. 2, n. 1080 in fine, nisi victor ex more lusus haberet jus cogendi alterum ad ulterius ludendum. But others, the Doctors, such as Adrian, say that they are not bound to restitution; and I follow these according to what was said above, for compelling someone to play is the same as compelling them to continue playing further. However, a coerced person, as we have said, can repeat what he loses after the coercion. 884. — « 8.

The more common opinion is that he who has played or fought with certainty knowing that he will certainly lose, ought to be held bound to restore. However, the contrary is held, namely, that one is not bound to restore what was won by chance, provided there was no deceit. Chapter 3. On contracts. Dub. 43. - vers.

Contract, because one is not bound to communicate his own expertise to another: but he should be charged with temerity for having ventured to lay aside what he did not know. See - Bon. l. c. n. 4. c. 9. r. 62. 882. — « 9. He is not bound to restore who makes use of those wiles which the rule permits and the received custom suffers; since each knows such wiles to be customary, and thus tacitly consents thereto freely. Azor, - Filliuc. c. p. 2. n. 2.

If having superior charters, and being secure in victory, he augments the sponsorship, or feigns fear, so that the adversary may augment it. 2. If knowing himself to have inferior charters, he shall dissimulate, increase the sponsorship, so that thereby what was appositely assigned to him may thus be left to him. Cardinal. Lugo, . 9. r. 43. 3. - If he examines another's documents out of mere negligence and without fraud; otherwise, if he positions himself in such a way that he can see them, or if he appoints someone else to do so as an advisor. 4.

If by stealth he learns to know the charters from behind, which he had neither signed nor known before. . t. 9. r. 50. et 52. « 40. Whoever makes use of frauds that are not usually employed, or conspires with unknown accomplices; for example, who counterfeits documents, or marks them from behind with signs, or uses marked ones, or those he knew before but

now ignores in his partner, or arranges them by some artifice—such a person is bound to restore not only the profit, but also the extent of the other party's expectation of gain, nay, even the opportunity for conspiracy. Reg. - Amic. c. r. 42. See also p. 4, t. 3, r. 25, and Bonaventura - de restitutione, d. 2, q. 3, p. 2.

It is certain that a fraudulent person is bound to restore not only what he has gained, but also what another would have justly gained if the fraud had not occurred: thus 2. c. 26. and 44. c. 4. punct. 3. n. 58. with Bonaventure. However, in doubt whether another would have been justly gainful, the fraudulent person cannot retain what he has gained, because at least it is doubtful whether he would have been justly gainful: but he is not bound to give the amount exposed to another, because the condition of the possessor is better; since another was not certainly gainful as they say. c. et cum and with others being held to give to another what his hope in victory was worth which the colluder had possessed when the fraud ceased; now (I mean by this) in the colluder there would have been a greater expectation of gain than fear of loss; for the reason that, in that case, that hope, which deprived another through fraud, was already worthy of some price. Whoever played, because he was fraudulently warned by another who had seen the partners' documents, certainly is bound to restore the certain profit, unless before the warning he had already determined (commonly called Bosta) to abandon the game. However, in doubt whether he would have played if not warned, others say that he is bound to restore the entire profit; but the common opinion holds more probabily that he is bound to restore only a proportionate part according to the doubt, as Croix says in lib. 3, p. 2, and there. Bonaventura ibidem dice non tenèri ad restituendum aliquid; alii dicunt tenèri ad totum.

Then I say to be held and even pro rata according to the doubt is probable; but because there was a certain injustice on account of that greater probability of defeating the fraud, therefore it is held liable for something. Note here, that one is not bound to move the player if he gives his hand, provided that he counts fewer points for himself. Cross ibid., n. 1043. cum. "44. If the player has in his mind neither to pay off if he wins nor to repeat if he loses, he cannot gain anything; and therefore neither can he retain what is gained, because he fraudulently deceives, nor would another wish to play with him if he knew this. . c. d. 5. n. 34.

Bonaventura ibid. » 42. They gravely and commonly commit a mortal sin who entirely devote themselves to games, knowing thereby that they incur grave sins, or become incapacitated for the purpose of paying debts, supporting their children, and providing for their wife, etc. 43. To play for

the Psalm, or for the recitation of the Lord's Prayer is not a sin, nor irreverence. . t. 9.

» r. 1. Here it is asked whether it is permissible to play while applying sacred prayers for a victor? Habert denies this, and at p. 662 n. 4 he says that it is not permissible to mix the sacred with the profane; rather, they say that it would be simony if one were to civilly obligate the victors. But rightly do they affirm that the same Council permits this likewise.

They allow it to be permissible, with Henry and Saint Ignatius. Reason, because it is indeed evil to employ the spiritual for profane purposes; but to employ the profane for spiritual purposes is licit and good: this is proven by the practice of the pious. Just as it is licit to exchange spiritual things for spiritual things, as we said about Simon, in book 4, note 72., so too it is permissible and not simony to mutually obligate oneself to provide spiritual services. If however one sinned by means of money, another by means of prayers, this certainly would be simony.

83. — 44. It is likewise a sin to play, if the game be established by positive law as permissible, such as games of chance and similar ones which more depend on fortune and chance than on industry. On account of the circumstances, things are forbidden venially to laypeople and mortally to clerics. . 2. c. 26. n. 6. Understand that if a cleric frequently and for a long time plays games which are by positive law considered permissible, such as dice games and similar ones founded more on fortune and chance than on skill; yet these same games are forbidden to laics according to circumstances under a venial sin, but to clerics under a mortal sin. The canons prohibiting this do not seem to be received unless it is done with the risk of scandal; as stated in 1. 3. tr. 4.

Chapter 24. Number 4. Diana notes, however, on page 7, tome 9, rubric 2 and 3 from the aforementioned laws, that by reason of the contrary custom there has been such derogation, that not only a layman but also a cleric does not sin if he primarily plays at cards or alehouses for recreation, and simultaneously for moderate profit; yet among religious persons (among whom regular discipline prevails) it is scarcely possible for bishops to be excused from a grave sin. » It is attempted to excuse it if necessity urges, for instance, exciting or recreating a sick person, or if one plays very little merely for recreation. 45.

If anyone has gained a forbidden advantage through such play, according to the probable opinion he is not bound to restitution before the judge's sentence: because laws do not annul a contract, nor hinder acquisition diminution, but merely permit it to be reclaimed. But he who has lost

through such a game is thereafter still bound to make good? Others deny it; see here doubt 5. Nay.

Reg. Value. etc. apud Bon. l. e. p. 3. n. 2. See Diana p. 2. tr. 7. r. 8. et p. » 7. t. 9. r. 24.

» 884. — All these are the reward of the work, each one being more carefully and diligently brought back to the mark. Above all, these laws should be noted, which prohibit forbidden games both according to canonical law and civil law. According to canon law, as stated in Canons 42 and 43, Distinction 35: A bishop, or a presbyter, or a deacon, who serves aleatory games and drunkenness, either shall desist, or certainly shall be condemned. Subdiaconus, aut lector, aut cantor si hoc simile faciet, aut desinat, aut communione privetur: similiter etiam laicus.

Item in capite Clerici, de vita et honore clerici dicitur: Ad aleas et tacillos non ludant, nec hujusmodi ludis intersint: item in capite Inter dilectos, de accessu. Fight. The Pontiff declared a cleric unworthy of the benefit who was a manifest dice-player, and consequently he entirely disapproved of such a custom among clerics, calling it a vice and a corruption. Item, concilium c. 1. de Ref. in relation to this matter, and regarding clerics, commanded that ancient canons and their penalties be invoked for use, notwithstanding any customs whatsoever.

According to the law of the civil realm concerning gaming. The gaming of dice is generally prohibited, so that no one may play or watch such games in public or private houses or places; and if anyone shall have done otherwise, no condemnation (that is to say, a claim for payment from the loser) shall follow, but rather the sum shall be returned, and those who gave it may seek redress by competent actions. The same is enacted in book 1 and 3, chapter on Dice Players. The same is established by Spanish law with regard to those who play with credited money.

See chapter 4, point 3, number 63, 885. — Hence it is to be considered whether and in what manner laymen, clerics, religious, and bishops, when they play at dice, sin. And as regards laymen, it is common and certain among the Doctors that such games are not forbidden to them under a grave penalty, as Bus. holds in lib. 1, cap. 8, de duobus generibus, n. 5, 34, num. 9, 540. Hurt. eod. tit. d. 8. et Diana p. 7. tr. 8. res. 2. cum aliis communiter. But it is exceedingly certain that, according to Bus., with regard to the aforementioned laws, the laity will not even sin venially, as they say. 2 c. 26 num. 6 de 7 praec. c. 6 et Sa 3 p. 2 n. 4086.

Because (as the aforementioned authors say), civil laws prohibiting them obligate laypeople only to punishment and not to guilt; for there is granted there an action for recovery of what has been lost to the victors, as stated in d. 1. Of alms, as was said above. The canon cited by the Bishop, as regards laicos, is commonly considered derogated from custom, as the Doctors say, see below n. 895. I said, with regard to the laws referred to, namely, whether the laity sin venially when they play principal games for profit?

They deny it from the ap. Note n. 4. Because it is not a sin to order a means to an useful end; therefore, if honest profit is useful, playing for the sake of that is guiltless. But, after considering the circumstances, I believe that according to P. p. 604, n. 3., it is not excusable from venial fault, because (as it teaches in . 2., qu. 77, art. 4.), every negotiation on account of profit serves the concupiscence and has some turpitude.

This is clearly demonstrated from chapter Quicumque, 14, qu. 4, where it is said: "Whoever at the time of harvest or vintage, not out of necessity but for the sake of cupidity, procures provisions... we call this a base profit." 886 — But there is doubt whether one gravely sins by playing at forbidden games primarily for the sake of profit? They affirm, Sylv. vers. The game question 4 and response 4, and Cajetan. Saint Thomas, Commentary on the Sentences, chapter 8, note 7.

Because (as they say), let the intention of gain not be mortal when the game is licit; yet it is mortal when the game is prohibited: for in that case the player intends to wrong his neighbor by an unlawful means. But commonly and justly they deny that there is a grave sin in drinking wine moderately. Mol. d. 540. Lugo decree 34, number 3.

Hurt. d. 8. diff. 2. et . c. r. 4. cum Val. Reb. et communi. Reason, because an intentio lucri cannot be mortal when the game is such that dominium can validly be transferred through it, insofar as then the player intends lawful gain even though the game, or mode of earning, may be illicit. But Lugo and Diana probably say that it is not even venial if a profit is intended for an honest end. 887. — Doubt 2: whether one who wins in such a game is bound to restore the profit before the judgment of the judge?

They affirm Sylv. Saint Anthony says. Arm. Cons. 4. c. 8. d. 4. n. 2. ex dict. l.

Of bonds, where it is said, that if he shall have conquered and loosed, let

him be made loose, and competent actions be repeated. But it must be denied with Busemburg and the common opinion held by them in III Sent., dist. 4, cap. 21, n. 3. Lugdunensis, decretum 34, numen 60, caput 4, punctuatio 3, numeralis 64. Sporer c. 6. n. 82.

Croia l. 3. p. 2. n. 4086. c. n. 3. (qui meritò dicit hanc sententiam omnino tenendam) n. 47. qui vocat veram cum Sot. Mol. Med. Cov. and to others commonly.

Reason, because (as is evident from the words of the law, as was stated above), there it is not declared a vitiated contract, but merely a victor's action is given for repugnance. And the same is said in n. 63 by Covet and others regarding the law of Spain forbidding a game for credit. They add, however, that this holds true solely in the case where the victor freely discharged himself, knowing that he was not bound by it; but Lugo, n. 67, c. r. 24, and c. n. 1087, probably says that the victor can retain the gain even if the defeated party did not know that he could deny the discharge: because he received from a valid contract, and the defeated party already had a natural obligation to pay, although by positive law he could have opposed an exception. — Dub. 3. Whether, if the victor impedes so that the judge does not obligate him to restore, he is bound to restore? It is answered affirmatively, if he impedes by force or fraud; otherwise, if by some other means.

Thus commonly Lugo, decision 31, number 62, section 21, article 2, number 2. Because the victor is not bound to restore, except after the sentence. Moreover, whether the victor, having been questioned by the judge, is bound to confess whatever he has gained through illicit gain, and whether in addition he is bound to restore anything else? They also deny it, along with Diana, in paragraph 7, treatment 9, reason 27, and consider it probable if that has not been proven at least partially.

Reason, because when a victor is examined criminally, so that he may be punished with the deprivation of gain as punishment for the crime, he is not bound to confess when the crime is hidden. But more probingly Lugo n. 64. and Croix n. 1090. affirm. The reason is that here it is not a matter of punishment, but of restitution granted by law, which is dispositive in favor of those who have lost, and not penal; for if it were penal, restitution would not need to be made to the victor, since he himself would also be an accomplice in the offense, but rather to the treasury or the poor. The rule, however, that a defendant is not bound to confess an occult truth to the judge interrogating him without full proof, as taught by c. and c. 31. n. 9. and Lugo n. 63., holds only in criminal cases, not in civil ones. 889. — Dub. 4. whether he who plays the forbidden game with the intent of

recovering in judgment may retain the profit?

They deny it n. 31. and Mol., because it would take away the equality of contract, since in that case one could gain profit and not suffer loss. But more probably do Lugo d. 31. n. 53., 4. c. 8. dub. 5. n. 4., and Ratio affirm, quia ex una parte contractus fuit validus, cum intentio non adimplendi minimè irritet contractum; et ex alia parte contractus remansit æqualis, exceptio enim non solvendi utrique parti semper competebat. Hence, si hunc lucratur, retinet ex contractu validi: si vero perdit, negat solutionem, utens beneficium quod lex ipsa tribuit. Dub. 5. an qui ludo vetito perdidit, teneatur solvere? The first opinion very probable affirms, and Sayr. holds it, l. 9, c. 22, n. 21; likewise according to p. 3, n. 2; and Lugo calls it probable, d. 22, n. 301, et punct. 3, n. 62, in fin.

Reason, because by natural law the contract was valid, and therefore the loser is bound to adhere to it until he opposes an exception judicially or petitions for restitution. The second sentiment, however, is more common and probable in negation, and they hold this view at 2 c. 23 n. 444. and 2 c. 26 dub. 4 n. 24. Lugo dict. d. 22. n. 300. et d. 34. n. 70. . 9. art. 4. n. 41. et . 6. de 7. praec. c. 6. n. 83. cum . Mol. et . ibid. et c. 4. punct. 7. §. 4. n. 74. ac . 24. quia in citata 1.

Of alms, c. de At frustra (they say) it should not be said that one who is lured cannot be compelled to give in the forum of conscience, even if he were otherwise compelled. But this reasoning would prove too much; for it would prove that one who gains by such a game should be held to restore what he has profited from before the judgment, because if the victor did not have a natural obligation to pay, the loser would unjustly find him out; but this is contradicted by common opinion, which we saw above in doubt 2. Therefore, the reason is more compelling, because the law, unless it removes the natural obligation, although it is broad in punishment for the victor, yet also in favor of the vanquished gives a right to the latter to defend himself by exception or repetition of discharge, and likewise grants an absolute right not to pay. What indeed is he bound to solve, if he can immediately repeat what has been solved?

This is confirmed from 1. To the creditor, according to canon 5 of the Decree on Contracts, where it is said: It is vain that which is repaid and must be immediately repeated. That is considered probable by Lugo, d. 34, n. 302. (contra Mol.) even if the defeated party lacks the courage to accept or demand a retrial in court. 891. — Doubt 6: an, if both parties renounce the benefit of the law in gaming, will the defeated party be able to deny dissolution? Correctly affirming n. 26 and Lugo d. 34. n. 65: if they have renounced without a vow, because the benefit of the law is given for the

common good, and therefore the withdrawal of those playing is invalid.

Nevertheless, Lugo observes in the same place, that if a renunciation were made after the solution, it seems valid and irrevocable; because it would be a new gratuitous donation independent from the game. If however the players renounced the benefit with a vow, correctly it is distinguished that if they merely vowed to be dissolved, they would indeed be bound to dissolve, but afterwards they could repudiate the dissolution. Accordingly, if they have sworn not to repeat it, because although the game is forbidden, it is nevertheless permitted and licit to solve such a lost game, and not to repeat that; hence such an oath holds valid, as pertaining to a lawful matter, as we shall see in the following question, against 892. — It is asked whether, in that case, the victor may petition from the prelate for relaxation of the oath? Others affirm at n. 27 regarding the oath concerning loans of usury.

But rather he denies it with Molina, because here a valid contract intervenes, which does not intervene in the pact for paying usury. They say, however, in c. 3, punct. 4, n. 6, that the aforementioned vow of making amends for forbidden games is not in need of relaxation, because it pertains to an illicit matter against the common good, since such games are forbidden for the sake of the common good. But Sporer in jurisprudence c. 1, n. 21, contradicts this by saying that it is true that a vow against what laws prohibit is per se void, as Palaus proves in d. 2, p. 8, n. 6. But in our case it must be noted that although the law prohibits this game, it nevertheless does not prohibit but rather permits its dissolution when lost.

Hence it is concluded that a vow to play the forbidden game of Jesus would indeed be null, because the game is forbidden and contrary to the common good; but a vow to redeem a lost thing is not null, because this is not prohibited by law. 893. — Dub. 7. Whether one who has already discharged his obligation can secretly compensate himself for the discharge? Adrianus affirms, and Angles considers it probable according to . 1. c. 8. dub. 2. n. 5. But it must be altogether held contrary to this: Sporer, tractatus 6, caput 6, nota 82, and Lugo, dissertatione 31, nota 71, with Soto. The reason is that dominium over the money already validly transferred cannot be reclaimed except before a judge; but what if the victor seeks to have the contract rescinded by petitioning for the return of the solvency, and the victor renounces the restoration? Consider the aforementioned points n. 717 and 894 — Dub. 8, and finally, whether if the defeated party threatens or hints in a judgment to repeat the dissolved contract, he can receive something from the victor under the title of transaction?

They deny it, Molina d. 514. n. 43., and Lugo d. 34. n. 72., together with Salas, and more extensively d. 22. n. 167., saying (as they state) that the contract of transaction was made through the fraudulent cause of the contracting party, namely through fear which in reality did not exist due to a lack of intention to repeat; and thus the victor can receive nothing, and if he receives [something], he is bound to restore it. They more probingly affirm that it can receive . 2. c. 17. n. 42. l. 4. d. 9. n. 6. tr. 2. d. 4. p. 10. n. 5. tr. 4. n. 24. et 3. p. 2. n. 1086. Reason, because although the victor does not have an intention, he nevertheless has the power to repeat; since by such a transaction he deprives himself in future; and the victor really does not give so that he may lay aside that intention, but so that he may yield to the right of repeating, as he yields thereto. 895. — II. As regards clerics, however, the matter stands otherwise than it does as regards laypeople.

But it must be noted that the canons which prohibit the clerics from engaging in games of chance apply solely to those clerics who are constituted in Major Orders and beneficia-tos, as they commonly say in question 3. Lugo concerning justice, day 34, number 42, when. Cons. l. 4. c. 8. dub. 28. n. 8. cum Ratio, quia (ut ajunt) canon Episcopus in principio relatus, quoad alios clericos saltem ex consuetudine derogatus est, sicut quoad laicos. As regards those who have benefices, see what is said in no. 834. v.

Commonly 896. — But there is doubt whether the aforementioned clerics or beneficiaries sin gravely by frequently playing at ale and in great quantity? mark III, n. 60. although they consider the opinion affirming probable, yet they deny that these men sin mortally, ceasing scandal. The reason for this is that the aforementioned laws either did not oblige from the beginning except for punishment, or were abrogated by custom, and they cite in support of their opinion 28 n. 7, 2 c. 26 n. 6, 7 in 7 praec. c. 6 n. 80. Mol. d. 512. et alii infra citandi: ratio, tum quia juxta canones (ut pro certo habet t. 9. r. 3.) damnantur de mortali clerici publicè et frequenter aleis ludentes, tum quia, licet canones prohibentes hodie non sint in tota sua observantia (ut concedunt c. ac Fill. tr. 37. c. 4. n. 59.), tamen non sunt omnino aboliti, cum lusus alearum de ipso jure naturali notabiliter dedecet statum ecclesiasticum, ut mox dicemus dubio sequenti. 897. — Dub. 2. an peccent graviter clerici frequenter ludentes aleis, etsi in parva quantitate? The first opinion denies what Sylo. v. holds.

Game, q. 4., art. 42. Item, abbat. S. dub. 28. n. 6. The reason for these is because the frequency of playing, although it aggravates the sin, nevertheless does not change its species, so that a venial sin becomes

mortal. The second common opinion affirms what we follow, and Cajetanus also holds it, 2. 2. q. 468. art. 3. dub. 3.

Arn. eod. verb. §. 4. 8. diff. 3. . q. 9. art. 4. n. 6. . c. n. 7. cum l. 3. tr. 4. c. 21. n. 4. Mol. d. 512. n. 6. q. 3. r. 2. c. n. 80 et 3 et p. 4 tr. 4 r. 483 ubi vocat hanc sententiam communem, atque ab ea non discendendum. The same is felt by Bus., as above (namely however, the game not only being frequent but also prolonged over a long time, as they speak from ex 4 n 77.). The reason is because, as we have already indicated above and as it teaches, such frequency very much discredits the ministers of the Church according to the law of nature. Neither can custom excuse this, because, as the Pontiff declared in c. Inter dilectos, de vita, et honesta cler. such a custom, as a true corruption, is to be condemned and removed at all times.

What kind of frequency is this mortal? Bordon. thinks it fitting to play once in a week, but Romcaglia considers this too rigid. But N. 6 and Wigandt loc. cit. hold that clerics who play for a short time, though frequently, for recreation, should not be considered condemnable, unless their own statutes of the diocese or order prohibit it. 898. — Doubt 3: whether clergymen sin gravely when they drink ale in large quantities, although not frequently? Sporer affirms d. c. 4. n. 80. and adheres Mol. d. 512. et alii ap. n. 9.

But Salas denies this according to Lugo d. 34. n. 44., and consents [to it] c. 24. n. 4., citing [him], saying that unless it is done publicly and with scandal: for Prelates speak only of the public gambler, and those devoted to such games. From all this I say I. that clerics who rarely, moderately, and privately without scandal play at dice do not gravely sin. But probably neither venially nor mortally, if they play for recreation in a place where the aforementioned canons are not rigidly observed, as Mol. says d. 542. c. n. 2. et tr. 9. r. 3. in fin. cum Dic. et Amic. 900. — I say II. the aforementioned sentences which condemn mortal clerics who play at ale as not proceeding to games of cards, which are not mere matters of chance or fortune. Others confuse the game of aleatory dice with every game of cards: but immorally, for truly, as the masters of the Latin idiom teach, alea is a name comprehending solely games of chance, which do not depend on art, but entirely upon fortune, and such are the games of talons, of tesserae, and similar ones. Hence I say that for those games of cards which entirely depend on chance, such as are commonly called Bassetta, primiera, and similar ones, these aforementioned sentences hold true.

Non autem pro aliis, qui sunt tam industriæ quàm fortunæ, ut sunt illi qui dicuntur Ombre, tressette, et similes (1). Pro his enim valde probabiliter puto cum Auctore Libelli cui titulus: Istruz. per li Novelli c. 47. n. 397.

cum Passerin. valere sententiam Salmanticensium, ut suprà, scilicet non peccare graviter clericos iis ludentes, nisi alicubi esset specialis prohibitio, aut scandalum. Touching which, he furthermore opportunely observed that it is necessary to consider the quality of the person, whether it be of great or small estimation; for clerics who do not lead a life more exemplary than others do not thereby inflict grave scandal upon the people if they frequently are seen engaged in such games, provided only that they neglect not their own ministerial duties; nay rather, they do not offer any scandal at all if they do this merely for the cause of recreation. And these indeed can be truly excused by the present and universal custom, which certainly differs from that ancient strict discipline of the primitive Church. 904. — III. As regards religious persons, Lugo says on day 34, note 42, question 28, note 9, and Molina in the conclusion of day 524: they themselves, because of their state and the scandal of others, can more easily commit grave sin through play or gaming.

Whereupon Roncaglia says in c. 4, qu. 3, resp. 2, and Bannaverti according to. Lugo d. n. 42. quod religiosi reformati, ut Capuccini, Jesuitae, Discalceati, et similes peccant, si semel his lusibus ludant. And all the more is this to be said in accordance with point 8, no. 95, concerning him who would open such a way of play by these means in these religions: Roncaglia (1) Bassetta, gall. Basselle, germ.

Bassett game. Primary, chicken. Prime, germ. Prime play.

Shadow, gall. Game of man, germ. The shadow play. Triple play, fool.

Seven-spade, trump. Trissell game. However, as stated in the aforementioned place and with this; but with S. [Saint] it is said that, upon removing the scandal and the contrary precept, such religious are excused from mortal sin if they play in a small quantity; and even from venial sin if they do so for a reasonable cause; namely, to relieve an ill person, or a sad companion: and this seems probable to me when speaking of card games rather than mere games of chance, according to what we have previously stated about clerics. They add in Salmantica, ibid., that it is also permitted for the sake of recreation, or where custom permits; but I do not agree with this, because such recreation per se is indecent for a religious person; nor can custom make such indecency seem proper. What exact sum can a religious person expose to play?

Now, however, the game is not specially interdicted by the Rule, before chapter 6, number 72; it is considered that three florins can be exposed annually. Others, however, as Lugo in Decretals 3, n. 144, c. 2, n. 655; c. 7, n. 79; and c. 19, etc., probably hold that if a religious person has

annually one hundred gold coins, he may expose five, provided that the same amount is not devoted to other non-essential uses in the same year. Others finally, as in n. 94 with Lugo, Mol. 902. — IV. And finally, as regards Bishops, if they indulge in games, since this would greatly detract from the episcopal state, they can hardly be excused from mortal sin, as Soto says, and in lib. 1, cap. 8, de conciliis, n. 5, who absolutely condemns them to grave sin unless they do it for recreation of the sick.

Moreover, except for this reason or one similar to it, Alcoz., according to Lugo, d. 31, n. 12, says that a Bishop sins mortally who plays at ale once. But with justified exceptions of circumstances, Lugo thinks this too harsh; whereas Sanchez excuses him from mortal sin in ibid., cap. 9, rubric 4, if he plays once for recreation; but Salas, in the same place, excuses even from venial sin in that case. Moreover, I find it difficult to believe that a Bishop playing for mere chance, even once, could easily be avoided from great scandal: just as I also consider it, if he frequently engages in other games not entirely fortuitous. — But whether clerics or religious sin mortally by observing and watching those who play at ale games? This has been forbidden to them, as we have seen, in the canon "Clerici" of life, where it is prescribed to them that they do not interrupt such kinds of games. Tamen communiter negant DD., in hoc ipsos peccas mortaliter, nisi essent causa ludi mortalis, vel negligerent lusores corrigere, vel nisi de tali ludo quatenus mortali sibi complacerent; secus si assisterent causa tantum se delectandi de industria vel fortuna ludentium.

Thus. L. 1. C. 8. Dub. 25. Cum Ao Tract. 9. R. 40. As to this matter, Barthol. de S. Fausto, according to Pi, in his interdict prohibited them under the penalty of excommunication; but I consider that said Author has fallen into a great error regarding this, for speaking of similar bulls, Sanck. l. c. does not at all remember such a bull; rather he remembers another one somewhat later. Here it is observed that the bull of St. Peter speaks only of clerics and religious assisting in the agitations of bulls, but not of the games of bulls. Bishops, autem, qui huiusmodi lusibus ex proposito assistunt et frequentur, difficulter etiam excusari possunt a peccato scandali gravis.

DUBIUM XIV. What is a contract of society? How is society formed? What are the necessary conditions for society? What comes under the name of damages? What comes under the name of expenses? And whether a partner can deduct expenses incurred on travel for himself? 507 Qu.

I. Is it fitting to divide the capital, if one contributes money and the other labor? Qu. II.

How is the laurel then to be divided? What. III. To whom shall certain damage always be open for the Lord?

What? IV. Is it permissible for a contract to entail damage that has befallen the common good? Which.

V. When is it considered that among brothers a partnership has been formed? And what must be observed in it? When is a partnership considered to exist among brothers? And what must be observed in it? VI.

In what ways may a partnership be terminated? 508 Can a certain usury be demanded through a contract, preserving the capital? 509 Concerning partnerships of living beings. Qu. By what modes may the partnership be terminated? Whether through a contract can a certain interest be demanded, saving the capital? Of animal partnerships. If you give rustic money to buy loaves for a fellow citizen, and he uses it for something else, can you demand profit?

Qu. II. Is it permissible to make a pact for supplementing dead sheep, dividing the interim fruits? What.

III. Is a contract permissible for the sake of a sound head? 510 What about negligence in the case of a son? 904. — "R. asp. It is when some persons agree with one another and contract with certain things suitable for a place, whether fruits, or cattle, or animals, or industry, or labor, etc., to make some common profit; and they divide between themselves either damage, according to reason, and the due share of each. See Q. 6. P. 1.

Whereby considering that which reason and justice have here established by nature in this ruler, matters are restored if a case: 4. It should be considered, he who confers money and his labor, as well as he who gives either money alone or labor alone. » 2. Capital, sive sortem, quam quavis contribuit, si pereat casu, vel culpa sociorum levissimâ coartibuscenti, perit.

Where the distinction is between this contract and a loan: in a loan, the contributed sort is alienated, and its dominion is transferred to the lender; hence, loss and damage accrue to him if they perish; whereas in partnership, he who contributes the sort does not at all alienate it from himself; and whatever is moved by chance or custom pertains to him, just as also peril and damage pertain. Therefore three are the principal lawful conditions of society: I. That a partnership may be formed in an honest transaction. II.

That the damage of chance may pertain solely to the lord. III. That equality be preserved, namely, that the estimation of the labor of one may equate to the use of money from another. See c. 3, punct. 44, §. 4, n. 96. q. 9, art. 3, n. 2, et alios passim.

IV. The condition is that each associate bear the burden of damages and expenses. By the name of damages, come only those harms which are encountered by the associate merely through the aspect of the association itself; for instance, if the cause of guarding, transferring, or acquiring goods is seized by robbers, as is found in law. When two are involved. §. Some, for the sake of the partner, where it is said: The partner ought to acknowledge as his own half the damage done to things other than money which he did not take along with him, unless he went forth with the intention of acquiring such goods for common use.

Non tamen veniunt damna, quæ remotè occasione societatis socius patitur, putà si occupatus in societate prætermittat acquirere legatum sibi relictum, negotiis domùs suæ providere, etc., ita Bon. de contr. d. 3. q. 6. p. 4. n. 1. cap. 4. Question 2. v. From the aforementioned authorities and others. Socium, §. Socius, ff. ibidem, titulus ubi id expressè sancitur. Nor do damages come, which are encountered by the associate through the vision of his own proper person, and not through contemplation of the society; as is read in the same § Socius, shortly cited.

Si autem causa societatis vulneretur socius vel ejus servus a latronibus, tunc solae expensæ curandi debent esse communes ex prædicto l. When two. §. Certain. 906. — By the name of expenses come costs of journeys, conveyances, collection of taxes, preservation of goods, and so forth. But there is doubt whether a traveling partner could deduct all journey expenses due to the cause of the partnership? They deny that from the name of expenses come journey costs, conveyance fees, tolls, preservation of goods, etc., according to Syl. V. Society, questio 12.

Eng. idem v. n. 12. item P. 3. q. 6. p. 4. n. 4. et probabile putat 2. c. 25. n. 35. Reason, because the society is not bound to bear expenses which the partner would have incurred at home, but only those in which it is damaged by reason of the partnership. Others however, as Roncaglia in c. 3, quaest. 2, resp. 2. Mol. d. 418. n. 2. c. 25. n. 35. n. 283. et Bonac. l. c. cum et probant ex l.

If brothers. § If anyone, ff for a partner, where it is said that the partner provides viaticum, and conveyances of stables, horses, waggons, or

whatever of his own (1) Art. 1881. If a determined thing, whose usufruct alone is brought into the partnership, does not get consumed by use, the peril of those things will be borne by the proprietor-socius; but if, on the contrary, use gets consumed, or if they are made worse with the passage of time, or if they are destined for sale and either estimated or conferred upon the associates, they will bring peril to the partnership itself. Edit. gratia, (societati) recte imputabit. Wherefore, since the law absolutely grants to the partner the right to receive viaticum along with other expenses, it does not appear why he should not receive it in full integrity.

This second opinion seems to be more probable, because it conforms more closely to the law. But since I dare not pronounce the first opinion as improbable, therefore I consider that if the associate in good faith applied expenses to himself, he may retain them; otherwise, similarly on account of good faith; because, as we said in no. 764. v. Question. II. With an opinion that is probable but not certain, possession cannot be commenced. 907. — Question None

I. Cum opinione probabili et non certa, non potest inchoari possessio. If one contributes money to a society and another contributes labor, should the capital be returned to the lord of the money above all else at the end of the society? The first opinion, which Glossa holds in I. 1. c. Pro socio, and Bart. tr. 33. d. 8. p. 3. n. 1., denies this, and not only states that profit should be divided between the two partners, but also claims that the risk should be shared equally between them. Reason, because in a partnership everything should be communicated; hence, just as the merchant performs his common labor, so too should the other perform his common money.

Others say that just as with the lord it pertains to the capital first and then its profit; so too with the merchant it pertains to the price of his industry first, and afterwards a part of the profit, which coincides with the same thing. The second opinion, however, is true, which those hold. cit. n. 2. Azor l. 9. cap. 3. q. 1. with Baldus, and S. 30. n. 24. Petroc. tom. 2. p. 405.

Bond of contract from Decretals, lib. 3, dist. 3, cap. 3, n. 3. Cabass.: l. 6. c. 13. n. 3. Escob. l. 41. c. 12. dub. 4. n. 82. c. 2. q. 3. r. 2. docet sortem semper primo loco domino deducendam, etiamsi nullum lucrum supersit. It is proven by the bull of Sixtus V.

Extraecclesiasticum. Detestable. § 2. where it is thus established: If a finite society has that capital, let that which was brought into the society be restored to him, unless the recipient of the partnership have been informed thereof, or otherwise there exists between the contracting parties a legitimate agreement to the contrary. It is proven by the second reason,

because money given to a society in partnership does not become common property among the partners so far as regards dominion or ownership, but only as regards use or utility, as stated in 2. q. 78, art. 2, ad 5, where the Sacred Doctor says: He who commits his money to a merchant or an artisan by way of partnership in some society does not transfer the dominion of his money to him; rather it remains his own; so that when the merchant himself runs risks with regard to it, or the artisan makes use of it. Just as if the money is lost, the master loses it; so too, if there remains, it belongs to him.

It does not hinder to say that in partnership both industry and money are made common; for it is answered, as we have already indicated, that in partnership property in money is not made common, but only use or utility; hence it suffices that one contributes the industry while another contributes the utility of the money. And thus, if in a terminated society only the capital remains, it will not be injustice if all is restored to the master; for as the partner loses the profit of his own industry, so this one loses the profit of the convenience of his money, which being exposed to commerce, is well suited to yield a return. And thus also it is not true what others suppose, namely, that one contributes labor and another money; for truly from one side labor is contributed, and from the other not money but rather the provision of money as a commodity; hence the merchant does not deserve the price of his own labor and the profit thereof; but only half the gain pertains to him, as the fruit of his own industry, and the other half pertains to the master of the venture, as the fruit of the commodiousness of his money which is exposed to negotiation, always provided that the master's capital remains safe. Accordingly, si quis ad negotium confert navim, et alter operam, completo negotio, navis quidem integra debetur domino, cum tantum usus navis sit collatus; et lucrum deinde est dividendum.

Question. II. Deduct the sortilege of the lord, how is the profit to be divided? In this they speak very obscurely and confusedly, DD.

Others, as in 2. c. 25. n. 9. q. 9. art. 3. n. 5. (and it is probable that Croix l. 3. p. 2. n. 4401) say, when one contributes a hundred gold coins and another estimates an equivalent amount of work, then the profit and capital should be divided equally according to the first opinion taken from the preceding question. Others, however, as Cabass. l. 6. c. 43. n. 6. et alii dicunt, quod deducto prius capitali in beneficium domini, reliquum æquè dividendum sit, etsi valor operarum æquiparet valorem sortis. With peace upon those doctors, I hold neither of the aforementioned opinions to be consonant with equity; for the first one assigns more equitably the value of the work performed, as we have already stated in Question. I; seconda plus

ponenti pecuniam.

Hence altogether it seems to me that according to . c. 2. q. 3. r. 2. and . 33. d. 8. p. 3. n. 2. and 3. with the Council, provided that the capital lord is saved, profit should be divided in proportion, considering the value of industry on one side, and the benefit of money lent on the other, according to the common estimation of profit which is commonly held from money applied to commerce. Here it must be well observed with reference to the same: c. r. 1. et Sporer de 7. prae. c. 6. n. 54., that sometimes the industry of the merchant is worth more than the use of money; and then the profit should be distributed proportionally, so that it might even be licit to divide the capital at the end, with the profit already distributed in equal portions; as happens according to custom in many places. In a partnership of animals, as Cabassus testifies, l. c. Furthermore, it must also be observed that sometimes the value of industry decreases because of the multitude of workers and petitioners in the society; for this reason, several contracts which at first sight seem injured might perhaps be excused, since according to common custom the industry of the workers contributed to the partnership is not commonly valued there more than they are. On the contrary, it would be altogether unjust that a pact should provide that, before anything else, the capital belonging to the master is restored during the partnership, and afterwards what remains is equally divided; for although the profit from the merchandise, which he will receive at the end of the partnership, compensates the merchant for the interim loss, nevertheless the one who puts up the money diminishes the risk of his capital by securing it in the beginning, and if after all the merchandise perishes, the merchant is subjected to the risk of the venture and profit; thus most appropriately in practice. Question None

III. Whether the loss of the reward be common when one person contributes money and another contribution of labor, and the money happens to be lost by chance? The first opinion, which the Major holds in 4th part, 15th question, 47th section, Third Gloss on chapter 1, book 1, concerning a partner, and others according to Azor, third tome, 1st part, 9th chapter, question 3, thus distinguishes: If the lot is lost after the partner has expended his labor, then the entire damage regards the one who supplied the money. If however the money perishes before the associate renders his labor, then the loss should be common.

Reason, as they say, because then, with one equally contributing labor and the other money, all become common profits and losses. However, the second sentiment is true, which the Glossa holds in chapter l. If they were not, ff. For the associate. No. 252.

Eng. v. Society, n. 17. Sylvest. in the same, vol. 1, qu. 6. Azor in the same place with Bartol.

Baldo, S. Ratio, quia non est verum, quod cum collatis pecuniis etiam sors conferatur; confertur enim tantum commoditas pecuniæ, ut supra diximus in qu. I. unde, cum sorte pereunte in principio contractis, domini illius nullam pecuniæ commoditatem conferat, sic etiam ad nihil tenetur alter, si nullam conferat operam. And thus we have said conversely, that in a finite society, the lot pertaining to the master of the money must first be rendered, and afterwards, if any profit remains, it is to be divided among the partners. It is asked IV.

May a contract be such that, if the sort fails, the damage commonally be borne between the one who supplied the money and the merchant? Response: Si pactum existit ut et damnum et sors sint communes, tunc licitum est; quia sicut ponens operam habet commodum ut ipsi tradatur media pars sortis, quamvis sors de jure tota ad dominum spectet, sic justum est ut sorte pereunte ipse subeat mediam partem damni, licet damnum sortis ad ipsum non pertineat. Thus Reg. in praxi 3. and Azor t. 3. l. 9. c. 3. q. 4. with others. If however the pact is such that the lot is not common, but the damage is common, then certainly it is illicit and unjust, since no just recompense is due for this.

See Azor, chapter Question NoneV. Under what circumstances is a contracted association considered to be among brothers? And what must be observed in it? Response: A society is not considered contracted among brothers unless it is expressly or tacitly inferred from conjectures; hence, not because brothers have an indivisible patrimony and live at a common table, a society is contracted among them, except perhaps if all are engaged in some business; or except if one person engages in a business while others contribute their goods.

Thus Azorp. 3. l. 9. c. 49. q. 4 Mol. d. 421. n. 6, Bonac. d. 3. q. 6. p. 7. n. 2. cum c. 4. q. 4. hoc præsumitur clarius si omnes conferant in commune cuncta bona ad unum quemque spectantia. This nevertheless is understood when each one contributes also his own goods, besides the common ones; otherwise, if only one contributes his own goods, such as gains from some office or art, and others solely the common goods, then he can compensate himself for them, according to what Azorius says in question 5, chapter . number 3 against Mol., that he may receive more according to the estimation of his labor. Si autem aliquis frater absens negotietur communi nomine ex communibus bonis, intelligitur habere societatem, usquedùm admoneatur ab aliis fratribus, velle ipsos divisionem facere; et tunc neque etiam desinit societas pro negotiis inceptis; ita contra aliquos. It is asked

VI.

In what ways may the society be terminated? The society is terminated either at the completion of the time specified for its constitution, or by the termination of negotiations, according to the will of the member. II. per mutualis consensus sociorum. To this, moreover, an implicit consent is also sufficient, namely if one of the partners begins to transact separately for himself, I.

Therefore, the same authorities in the same title. Si vero quidem quis, socio invito, renuntiet ante tempus, tenetur ad interesse. Receive 1. If this is necessary for the sake of the public good, namely, if a member should be absent on account of public affairs, and it is not possible to conveniently substitute another person in his place, then he is bound to provide for the interest [of the community]. 2.

When there is no hope of obtaining that for which the society was formed. When another does not observe the agreements. 4. When another severely damages the partnership. These nevertheless ought to be certain, otherwise possession would stand for the observance of the contract.

See Bonac. de contr. d. 3. q. 6. p ult. n. 2. III. The society is terminated by the death of one of the associates; nor does it pass to the heirs; and this, even if the agreement was that the society would pass to the merchant's heirs, according to I [Digest] on the associate. Reason, because in a partnership the industry of the person is chosen, but it is unknown what kind of industry the heir has.

However, it is excepted unless the agreement be confirmed by a vow: just as the partnership is not terminated in regard to business begun; nor in regard to taxes or other public matters, as Molinaeus says in his fourth hundred and forty-fourth chapter, and Bonacorius in the same place with the Fourth Book. The society is also terminated by civil death, that is by exile, or by the solemn profession of the associate, according to I. True, §. fin. ff. eod. V.

It is concluded if the associate, being burdened by poverty or infirmity, or having been consigned to prison, cannot provide the promised money or labor. Moreover, if the money given is lost, even though the associate has another amount which he could contribute. Bonac. num. 5. Item, si res ita sint mutata, ut societas non sit amplius idonea, ex hoc.

I. True, §. fin. (4). (1) Art. 1888. The partnership is dissolved; 1° At the

completion of the time for which it was initiated; 2° Upon the extinction and termination of the business; 3° By the natural death of one of the partners; 4° By the civil death of one, through interdiction or publication of goods; 5° By the expressed will of one or more partners. 908. — "3." However, it can also happen in this contract that one justly preserves his own indemnity and moreover receives a certain profit, provided that two additional matters are joined to the contract of association, namely security and sale; an example of which is given by the saying: "If he will be annually gainful by 300, half of whose profit is valued, according to the law of the partnership it belongs to you with your share; but because the risk of the same share should also pertain to you, in order that he himself may bear this risk and secure your share, you leave him a greater part of the expected profit as compensation for this burden, so that two parts of the expected profit belong to him and one third to you."

And again, since this hope of profit is uncertain, therefore you also sell this part of the hoped-for profit, namely 100 florins in hope, for either 50 or 60, for example annually certain and in reality, and thus finally you make this profit and keep the indemnity intact. This is the famous question of the Three Contracts: whether profit can be exacted with certainty through them, while preserving the capital? The first opinion denies this, which Opinion Sotus I, 6, q. 6, a. 2 holds. Merbes. tom. 1. p. 348. Hab. tome 4. page 317.

P. Concil. tom. 7. pag. 489. c. concl. 2. (qui tamen admittit contractum duplicem, ubi sola sors, vel solum lucrum assecuratur, in quo consentit etiam Cabass.) I. 6. c. 13. n. 1.), item Ban. Reb. et Mercado ap. . 14. c. 3. punct. 11. §. 2. n. 99. et videtur adhaere I. 9 c. 4. q. 5. Reason, because through such adjunct contracts to the contract of association, the society is destroyed, since by its nature it is such that one who gives money is in danger of gain and loss, or at least of one or the other, according to the opinion of Cabassutius and Cont.

Tourn., ut supra: destructo autem contrahendo societatis, deficit justus titulus ex quo ille possit fructum exigere de sua pecunia; et tunc lucrum ex muliere exigeret, in quod transierit societas, dejecto toto periculo sortis et lucri ad socium recipientem pecuniae. It does not hinder to say that if such contracts are added to this society with different persons, or at a different time with the same associate, even persistently; similarly, it would be so if they were made at the same time and according to Article 1866. Si res, quam socius in communitatem afferre promiserat, perit ante executionem promissionis, integra solvitur societas; idem dicendum cum res cujus solo ususfructus inter socios collatus est perierit; non vero cum perierit res cuius proprietas ipsa in societatem venerat. Article 1868.

It can be stipulated that the society also pass to the heirs of one or to the remaining partners upon the death of a partner. Art. 1869. Societas ad tempus non determinatum solvitur renuntiatione unius, signi- facta refugis, modo bona fide et non alieno tempore fiat. Art. 1871.

If however the society is for a determined time, its dissolution before that time should not be demanded, unless some grave reason has intervened, such as unbelief or continuous infirmity on the part of the associate. (1) On this triple contract the Civil Code says nothing specially. Edit with the same partner: for the brothers respond to this first proposition, that in such cases the society would persist; but here the society is destroyed, and thus the basis for profit from it is lost. Furthermore, the aforementioned authors have guarded against the rejected opinion that was already condemned by Saint V., who, through the Decree Detestabilis, issued in the year 4586, states thus in §4: We condemn and repudiate all contracts which are harmful to persons, monies, animals, or other goods of the society under the name of association, so that even if any loss should occur by fortuitous chance, the capital itself may always remain safe; or so that for a certain quantity during each year or month of the duration of the society, response may be made. And therefore it seems that our Most Holy Fathers have adhered to this sentiment.

Pontifex Bened. XIV. In suo aureo libro de synodo, l. 7, c. 4, ubi dixit quod licet haec quaestio indecisa remaneat, cum plures et non obscuri nominis theologi posteriores tria contrahunt ab usura absolvant, tamen hanc sententiam praefata bullae magis congruere sentit. Another bull of St. Pius V says in his treatise on censures thus: We decree that no direct or indirect conventions obliging one who otherwise is not bound by the nature of the contract to cases fortuitous be valid at all. The second opinion, however, more commonly defends the licitness of this threefold contract, provided that there be no intention to act otherwise, and the associate who receives money is absolutely obligated to apply it to the business; those who hold this view are found in 18. n. 254. 2. c. 25. n. 23. 5. c. 44. n. 3.

Lugo. d. 30. n. 40. . 3. sectio 5. tractatus 4. caput 48. n. 14. tractatus 32. d. 8. p. 5. Bonac. d. 3. g. 3. p. 14. n. 2. Escobar. lib. 44. dub. 3. n. 88. quaest. 2. Mazz. tom. 2. p. 464. proc. c. 6. n. 58.

Mol. d. 416. c. 3. punct. 14. §. 2. n. 100. cum Jo. Major. D. Parisinus et Sylvestrin. P. Na-varr.

Arm. and very probable he calls Azor in place above cited, at least

according to natural law. See also the libellus excused at Paris in the year 4745, titled: Theological Examination on the Society of Rent-Charge Loan, in which are verbatim referred to the approvals of contracts issued by the Academies and theological Faculties of Cologne, Treves, Complutum, Salamanca, Ingolstadt, Freiburg-Bischofsheim, and whatever pertains to the society concerning a loan. For as regards the first point, Navarre and Lugo deny that on account of the risk conjectured for the associate, the partnership should be destroyed; just as in the case of a loan contract, although the risk of the thing fortuitously belongs by nature to the owner, yet upon fair compensation being made, it is held that the pact should be added such that the risk pertains to the commensurate, and thus the loan contract is not then destroyed: similarly also in partnership contracts, whose essence does not include; as the adversaries have stated, but rather the opposite: they ought to prove this, for indeed they more properly oppose it. If they were not. §. Thus, ff.

Regarding the partner, where there is wealth: some hold that knowledge can be lacking and yet no part of damage; another thinks differently; but when it is common, Cassius believes so. To speak of the essence of society is to say that both parts contribute something to the common use and advantage, and that equal benefits and burdens are shared. Hoc quidem fit, ut ex commodis aequalibus aequalia sint luora, et ex aequalibus incommodis aequalia sint pericula. Wherefore when anyone assumes the whole risk, by undertaking a secta to safeguard it both in respect to sortis and lucros, although he may feel an inconvenience; yet that is compensated for by the greater gain; whereas he who contributes money to the common fund does not feel any inconvenience from the risk, but feels an inconvenience from the lesser gain, thus there is equality; from which principally the society is constituted.

How much damage may be demanded? Mag. How much surety may be demanded for letters of credit? Much.

Serra apud Bonao: if negotiated, it would be more generous; and less perilous. On the second true foundation, namely that in such a case the partnership would pass into matrimony, because, conjecturing total risk to fall upon the partner, then also the dominion over the chance would be transferred to him, so that he could dispose of such money at his own will without injury to the other partner; the supporters of the second opinion respond differently: Lessius n. 30 and Azor l.c. (although this latter opinion is contrary) say that such contracts, although the partnership does not remain, do not nevertheless pass into a loan, but into another species of contract, namely the conductio operum socii, as Lessius speaks or contracts immoni nati, as Azorius says, who holds then that the contract

does not pass into a loan. Others, however, as Lugo, Pelaus, Escob., and Boncaglia, respond that although the society persists despite the risk undertaken by the partner, yet it does not pass over to the other: just as in a loan, if the borrower takes upon himself the risk of the thing lent, he does not acquire its dominion when the contract of loan remains; so too in our case, the partner and the risk taken do not acquire dominion over the thing, just as in a loan; for although by paying off at the end of the contract the value of the thing, and observing the terms, he would not finally deprive the owner of the thing; yet if he did not apply the money to the business, it could be rightly compelled (says Lugo n. 43.) that he apply the money to the business. Likewise Lugo adds, that if such a partner be burdened with debts, even hypothecary ones, his creditors cannot have an action against this money; and on the contrary, the owner might reclaim it as if it were his own. But that this contract does not pass over into a loan is more strongly proven from the aforementioned text in the law.

Si non fuerint, ubi dicitur bene posse coiri societatem, ut suscepto a socio periculo alter nullam partem damni sentiat et tamen lucrum communicetur. To the bull of Sixtus V., they respond as authors of this second sentence multiple times: they say that the prohibition of the bull is to be understood of him who would coerce a partner into such contracting by means of the very contract of partnership; but Lugo, and q. 2 add that this cannot be an illicit act, because each one can will another person to join in a contract, when no injustice is present. Hence Lugo n. 37 and others say that the Pontiff there disapproved of no other agreements except usurious ones; and thus he is reported to have responded according to the oracle of living voice, as Lugo relates from Filluicio and Comitolo, who moreover testify that they heard from P. Tuscium that Cardinals Toletus and S. Severina, to whom was entrusted the care of sanctioning this bull, affirmed the same; likewise Lugo refers to a certain decision of the Roman Rota on the day of the 3rd. June 1602. from Cherubin in the composition of the bull.

Schol. 4. ubi fuit decretum comprehendere praefatam bullam solos contractus usurarios de jure naturali vetitos, additis tamen majoribus poenis. Finally respond punct. 14. §. 2. n. 404. cum bullam vel receptam non fuisse, vel usu in hac parte abrogatam; testantur enim adesse consuetudinem immemorabilem tali modo contrahendi in Hispania, Gallia, et Italia; et fere per totam Ecclesiam. Regarding the bull of Saint Pius V, see what other authors respond above at note 849. They justly do not reject this second opinion, fortified as it is by so many authorities and reasons.

Abelly de tertio principio, sectionem quartuaginta-trequartam, nota sexta,

et auctor pagina quadringentorum et quatuordecim, quamvis sententiae contrarias adhaereant, et ego eas satis probabilem reputo. Furthermore, since it cannot be denied that such a contract is devoid of any risk to the mind of the usurer; hence I deem it advisable to recommend the first opinion universally to all. 909. — « 4. The society is likewise instituted with regard to flocks both firmly and lawfully. And sometimes indeed so, that both the very sheep themselves, which are entrusted to be pastured and nourished for another's use, as well as the profits and fruits, namely the lambs, wool, and milk, are common to both the giver and the receiver; but sometimes indeed so, that the dominion over the sheep, consequently also the risk or hazard, pertains solely to the giver; while the profits of the fruits, namely the lambs, wool, and milk, pertain to both.

See. l. 3. t. 4. cap. 20. Here is the reward of this work to note some very useful things concerning the society of animals for practice. According to the nature of society, animals which perish should perish only for the sake of the Lord.

As for those that perish, it pertains to the custodian to prove that they have perished without their own fault; otherwise, they will be held to restore the estimation due to the Lord, as well wisely states cap. 4, art. 2. When Sanbov. Puntas, et aliis. That is clearly proven from the law with two, book 52, section Damna, ff.

For the associate, where: Chapter 3. On contracts. Dub. 14. Whereas if from thieves (cattle) has been stealthily taken, it is a loss to its owner (that is, the custodian), because he ought to have provided custody and accepted payment for that service (1). It is asked: 4. If a peasant should ask you for money, so that he may buy oxen for his work, although in reality he does not purchase oxen but rather extinguishes his debt— whether you can demand profit from him?

Benefit distinguishes from contract c. 3. Reg. in praxi 2. quòd si tu malà fide pecuniam dedisti, sciens illum non empturum hoves, nihil exigere potes; nisi (intelligendum) aliunde pecuniam applicasses alteri negotiationi, et de hoc illum monuisses. Si vero bona fide dedisti, tenetur ille reddere tibi lucrum cessans: et tunc ad illud tenetur, etiamsi tu eum de tale lucro cessante non monuisses. Question 2. Whether it is lawful to make a pact such that if some sheep die from a flock, they should be replaced with the offspring that are born, and in the meantime the other offspring, wool, and cheese should be equally divided?

They deny it, chapter 9, number 11, note 2, and Sylvester 3, book 9, chapter 8, question 12, because they say that in this equality is not

preserved; but Filliucius, tractate 38, chapter 6, note 404, says that the standing point is according to the custom of the place. However, they also say the same thing, Filliucius. Azor l. c. cum aliis, item 33 p. 65 n. 2. et c. 3. Reg. in praxi 2. hoc contractum satis licitum esse, quia talis substitutio ovium resultat tam in gratiam pastoris quam emendae oves.

It does not prejudice the matter that during this time the pastor should lose profit from the replacement lambs, because meanwhile the partner also loses a part of his own profit. Tamen non obstantibus his, mihi videtur prima sententia omnino vera, quia licet lucrum utrique prius diminuatur et utrique postea compensetur; tamen foetus qui substituuntur æquè dividendi essent inter pastorem et dominum: at quando substituuntur id certè magis cedit in utilitatem domini quàm pastoris, cum dominus jam sibi compenset deinde jacturam lucri, sicut et pastor; sed interim dominus pluribus in Codice civilis species locationis animalium distinguuntur: le cheptel simplex. — le cheptel d moitié. — le cheptel donné au fermier ou au colos partiaire; sed principalior est animalium locatio, quæ simplex seu ordinaria vocatur, tradens regulas multas etiam aliis speciebus communes. Article 1804. The contract of the location of sheep is that by which the locator delivers the animals to be guarded, pastured, and nurtured to the conductor, with the condition that he share half the profit and loss.

Art. 1807. Contrahensio est de pecuniis, quibus dimidium lucrum et detrimentum participatur. The conductor is not bound by a fortuitous case, unless the fault of the latter has preceded. Art. 1810. If the entire flock of sheep perishes without the fault of the conductor, the lord perishes.

If however it is lost on one side, the loss of the common flock will be attributed to the animals placed both at the beginning and at the end of the arrangement made in the middle. Article 1811. There is no stipulation whereby the conductor would take upon himself the loss which occurred solely by fortuitous chance and without any culpability on his part, or more damage than he would share in profit, or where at the end of the location the locator could receive anything other than the flock of animals. The emolument of milk, dung, and labors of animals belong solely to the conductor: but wool and fetus belong to both [the conductor and the owner].

Digitized by Google 590. Book 4. Treatise 5. Of the seventh precept of the decalogue: he always preserves his own safety, which ought to have been diminished, and therefore equality would not be observed in the contract.

It is asked whether a contract called for the safeguarding of the head is licit, namely, when animals are handed over to the pastor with a pact to

return them safe in the same number at the end of the association; speaking per se, this contract is illicit, as well they say, c. 3, q. 3, art. 3, n. 2. Azor tom. 3. l. 9. c. 8. q. 10: cum Sylvest. et Reg., quia sors debet stare periculo apponenti; res enim suo domino perit (1). Probabiliter tamen licitus fieri potest, si adjiciatur alius contractus asscurationis, compensando pastori per majorem partem fru- ctum: onus talis periculi sortis in se suscepti: item Azor f. c.: cum Sylvest. et c., cum q. 9: art. 3. n. 8. cum . : qui videntur docere talem contractum esse usurarium, quia dum trans- fertur periculum animalium in alterum, jam transfertur eorum dominium per venditionem, ex qua non tenetur ille reddere nisi pretiam; unde, si partem fructuum reddit, usurariè reddit. But . 23: dub. 3. et . et aliis, respondent in eo casu non haberi contractum venditionis, sed permanere societatem, et lucrum licite exigi per aliud pactum assecurationis, prout dictum est supra n. 908: in quaestione trium contractuum. As to what can be received in such contracts, he says that it is proper for the judgment of experts to stand, or for the practice of any place fearing men; and rightly adds that these contracts should prudently be entered into separately.

To the Bull of Sixtus V. Detestable, where contracts of partnership are condemned by which care is taken that capital always remain safe for the lord, see what the cited doctors respond at note 908. v. To the bull mentioned above. Well indeed he observed, c. 3.

Reg. in praeci, certe injustum esse contractum, quo dominus dat boves aestimatos juxta prae- sentem valorem, cum pacto, ut si decrescant, finita societate, idem valor restitui debeat; quia deterioratio rei ad dominum pertinet, nisi aliunde hoc damnum compensetur. Now, if nevertheless there were a pact such that at the end of the partnership, both profit and also the share in the animals should be divided with the partner; then indeed it will not be unjust a pact that if meanwhile the capital perishes, the shepherd is bound to restore to the lord half the share, as stated in n. 907. v. Question. IV. 940. — Hic ultime quaeritur; an filius negotiante cum patre ponente pecuniam et ipse industria, possit accipere partem lucris, suo labori et industria correspondentem?

Roncaglia affirms in his treatise on contracts, cap. 4, Question 5, r. 2, that a son does not engage in business for his own account; but if he engages in business without the father's consent, then he can receive only what the father would have given to another by reason of his labor; and likewise said Legum et (1) A contract is to be called illicit even ex caput salvum according to the same civil law, although it may not expressly mention the matter; yet it is possible for the father to deduct from the value of aliments what no longer owes the son, so that he has something wherewith to sustain himself. But since Croix very probably denies in Tom. 3, Pars 4, n.

1054 that a son can petition for wages from his father for his labors and expenses incurred in his household, as we held in said n. 544., hence we say (contrary to him) that the son can in no way secretly receive that, dissenting from the father. DOUBT XV. What is surety and fiduciary guarantee? 914. — « Resp. 4. »

The contract of assurance is that by which one takes upon himself the peril of another's property, obligating himself, either gratuitously or for a certain price, to compensate it if it should be lost. If it is made gratis, it is a gratuitous promise; if for a price, it is as it were a purchase, by which the insurer secures his obligation to provide compensation for the thing promised. For the justice thereof requires that the event of the thing be uncertain to both, at least so far as their knowledge thereof extends; because: and: equality would not thereby be observed. Whereupon Bonaventure, in the third part, question ninth, page three, chapter two, section twenty-eight, decree four, note twenty-four, (1), resolves: "1."

If the guarantor is certain that the thing is in safety, and he seeks the price, then he is bound to restore it. 3. q. 9. p. 3. "It is certain. . 9. c. 3. q. 22. " If the thing is not yet in safety, even though private knowledge knows there to be no danger, nevertheless it is permissible for the ordinary price of assurance to accrue, says c. n. 27, because that obligation is esteemed great on account of ordinary dangers, and hidden causes which diminish the danger do not lessen the common estimation. But that is stated by Bonaventure, d. 3, q. 9, p. 3.

If one desires to secure his thing, he must certainly know that since it has perished, he cannot make a bargain concerning its security. See c. n. 25. 914. — "Resp. 2." Fidejussio est contractus, quo quis alienam obligationem suscipit implendam; si debitorem principalem non solverit. Thus » common.

Deet. Whereupon you resolve: "4." It is permissible to receive payment for a fiduciary obligation, even though no danger be feared; because of itself the price is estimable. l. 14. c. 12. d. 5.

Fill. a. 159. It is common among Pica n. 3., and it absolutely seems to me that whatever they say in 1406 should be held, because such an assumption undoubtedly entails a estimable price. • 2. Women are not bound by a bond of surety (at least if there is no oath and no public instrument), neither are clerics except insofar as they can be conveniently released so that they do not suffer need. See Laymann, Bonacina, question 9, page 2, (1).

A fidejussor no se obliga más que el principal: y esta obligación, si es invalida, será también la del fidejussor. Lugo, etc., communitas (2). « 4. A fidejussor regularmente non potest convenire, nisi factâ excussione principalis debitoris, constetque ipsum non esse solvendo. Azor loc. cit.

» Fill. num. 153. (3). « 5. A debtor is bound for any damage resulting from his own fault in connection with the fidejusory, etc. See Azor, d. 10. Bon. "6." By the religious vow made through its own authority, the monastery is not obligated, except so far as it has been directed towards its own benefit.

See c. 28. and n. 7. Whoever has made a surety bond for a person who was in danger of capital punishment, and that person fled, is not to be reproached on account of this, because it is not presumed that one would thus obligate oneself; rather, he cannot do so, since he is not the master of life. Sylv. Good.

». 7. n. 41. « 8. If the debtor does not discharge his debt through his own fault, he is bound to the surety who, on his behalf, "has discharged," not only the debt itself, but also all damages and expenses, compensating them entirely. If, however, without guilt, for instance due to incapacity, he did not pay, it seems that he is bound only to the debt. Azor, c. 26, d. 2, (4), (1) It is established from the Civil Code interdicts that minors and wives are incapable of contracting without consent, by the authority of the husband and judge (except in matters of commerce, which they publicly exercise): therefore, they are also incapable of giving security. (2) Art. 2012.

No one is competent to fidejure for an invalid obligation. Art. 2013. Fidejusors ita obligari non possunt, ut plus et strictius debeant quam debet is pro quo obligantur. On the contrary, they can be obligated to do less and both in reality and in manner.

If they promised more than was due, the fiduciary trust is not thereby nullified, but is reducible to the principal obligation. (3) Art. 2021. The fidejusor is bound only to release [the debtor], provided that the goods of a deficient debtor be previously seized; unless he renounces this right (gall. beneficium de discussion) or obligates himself in solidum for the debtor. (4) Art. 2028. The fidejusor, who has solved on behalf of the debtor, always retains an action for the price, which was paid upon the day when the suit was commenced against the debtor, together with the expenses incurred and damages suffered in compensation. Article 2022.

Fidejusor, qui nondum solvit, ut indemnis reddatur, in debitorem agere potest: 10 Dum ipse coram judice convenitur; 20 Dum debitor foro cedit vel solvendo est impar; 30 Dum debitor se obstrinxit ad eum certo tempore liberandum; DUBIUM XVI. What is a pledge and a mortgage? §13 What is a pawnship contract? §14 What if someone uses a pledge? §15 What can be pledged? §16 Concerning the antichrist contract? §13. — « R esp. A pignus est contractus, qua debitor creditori dat rem aliquam mobilem vel immobilem, ut sit pro debito obligata, et ex eaque solvatur possit. Sometimes however the pledge is received for the very thing which is given.

It differs from a mortgage in that a pledge properly speaking is movable property, whereas this is immovable property. Molin. p. 4. Special hypothec specifically impedes the sale of goods, but not general hypothec. Hence resolved: §14. – « 4. It is not permissible to neglect the use of something against the will of the lord; for it is a thing belonging to another, given only for security and not for use. A garden or field should be valued according to its use and all its fruits, if it is naturally productive, in the assessment, after expenses are deducted, because otherwise one commits an abuse when the thing brings forth fruit for its lord.

» (It is presumed that the lord consents if no harm follows, for instance, if another uses a book and similar items. . 9.) (2). §15. — « 2. They cannot be pledged, which cannot be sold, for example. The Church. Molin. d. 530. . 2. c. 28. d. 3.

Bon. l. c. 4o Dum elapsum est tempus solutionis; 5o Post 10 annos, si tempus solutionis determinatum non erat, nisi agatur de tutelà allisve hujusmodi obligationibus, quæ tempore extingui nequeunt. (1) Confer de Hypothecà art. suprà ad n. 689 positos. Regarding the difference between a hypothec and an antichresis, concerning which this discourse is held: in an antichresis, the thing itself is delivered to the creditor; in a hypothec, only the obligation is incurred; moreover, in a hypothec, a privilege is conferred upon the creditor either over the thing itself or its price, not however in an antichresis. Article 2072. The seizure of movables is a pledge; the alienation of immovables is called an antichrist.

Art. 2073. The pledge confers a privilege to the creditor, so that from the thing pledged itself satisfaction may be made prior to any other claims. Article. 2076. This privilege is not obtained, unless the thing has always been in the possession of the creditor or of another, at the discretion of the contracting parties. (2) Art. 2080.

If the pledge due to negligence on the part of the creditor perishes or

becomes worse, he himself will wholly receive the damage. Contrary to which, if the creditor has made necessary or useful expenditures for the maintenance of the thing pledged, the debtor will compensate him. Article 2081. If a pledge be established from the credit, which has its own interest, this creditor shall reckon it in what is owed to him, apart from that, if no interest is due at all. - 3.

Immovelia, ut mobilia pretiosa cultui divino dedicatae, v.g., calices, cassettae, non possunt oppignorari nisi in necessitate, quia tunc etiam vendi possunt ut Ecclesiae et indigentibus subveniantur. See - 4. Creditor, qui pignus ab aliquo accepit, potest illud alteri oppignorare, sed non pro majore quantitate. Neither can he sell, when the debtor is not solvent, except after two years, and even then only with prior warning.

Some, however, say that it can be sold after three warnings. See 3. t. 4. c. 30. (4). - 5. The same thing is not permitted to be pledged or given as security to many, unless it be sufficient for satisfying all, or later ones are warned concerning the prior lien. Azor, 3. q. 40. p. 4. d. 4. 946. — « Quæres: Quid sit contractus antichriseos, germanica eine Pfandschaft. »

"According to custom." To enjoy.) (2). - Resp. It is such that in a contract of pledge, the creditor uses the pledged item, for example, an acre of land, and the produce therefrom yields profit as long as the debt is thus repaid. Therefore, concerning this matter, it will be resolved according to what has been previously stated: - 4. The contract here seems to be according to Cœj.

Sot. etc. (contra certain jurists) to be usurers: because the creditor gains something beyond the stipulated amount; for the cause alone of lending; which is usury. See 3d. t. 4. c. 46. n: 47. It is certain that for the reason why it is held that even those fruits must be returned which were negligently omitted to claim through slight fault: Vasq. What if a fallow field is sown?

They still say to thee: Restore the fruit that has already ripened, Moi: Bon. etc. contra: Sa,) - 2. However, just titles can intervene in the fruits of gain, even if they are neglected; without diminishing the estate: as for example, if the fruits taken under a mortgage do not exceed the amount of the pension which the rights of census imposed upon it could demand with redemption-purchase, as above stated and concerning censuses; or if some profit ceases to be, or damage arises, while the debt is deferred. Whereby it is not easily justified those who from the beginning hold fields, pastures, offices, etc., against interest. See c. and: Binsfeld on Usuries, Molinaeus etc. (3).

CHAPTER IV DE TUTELA ET TESTAMENTIS. DUBIUM I

Quid sit tutela et curatela? 817 Quibus detur tutor et quibus curator? 818 Ad quos teneantur tutores et curatores? Can minors and pupilli bind themselves irrevocably without the consent of the tutors, etc.? 917. — R esp. They are quasi contracts by which tutor and curator, in order to procure good and advantage for minors of any sex who either lack a parent or have not been placed under their power, is bound by justice as if such obligation had been assumed through contract; the law supplying the force of the contracted agreement. The tutor and curator differed in this, that the tutor is given even against the will of the one who lacks maturity, and primarily to those persons so that their education and upbringing may be provided: secondarily it is also given for all matters pertaining to the good of those individuals.

The curator is given to minors after the years of puberty are fulfilled, up to the completion of the 25th year; it is not commonly granted unwillingly, except in certain cases, and is primarily given for the affairs of minors, secondarily for persons. Wherefore concerning direction in the forum of conscience, by both natural law and common positive law, resolutions are found in d. 4, q. 7, d. 40. Good. d. 3. q. 49. (1). — Resolves: 918. — 4. Tutors, quorum uni ex his testamento relictum fuerit, vel codicillo patris; sive sint dativi, id est constituti secundum Art. 1088.

The Antichrist alone is perfected by scripture; and it should be credited to the creditor the fruits received in interest or diminution of the estate, if interest is not due. Article 1088. The creditor shall pay tribute and other burdens, and besides this, he shall make necessary or useful repairs; furthermore, he shall compensate for any emergent damage and loss of profit; nevertheless, expenses may be compensated out of the fruits [of the property]. Article 1088.

No stipulation is such that, upon the creditor having not made payment at the time prescribed, he may evade possession of the movable thing; but rather the debtor shall be deprived of dominion through judicial means. Edit. (i) In iure novo minores dicuntur qui nondum annos viginti et unius exactos natus sunt; his omnibus, si parente careant, tutor dari debet, sive puberes sive impuberes sint, velint an nolint. Minor, per contractum matrimonii, ipso iure a potestate paterna emancipatur; etiam non per contractum matrimonii, poterit a potestate paterna emancipari, modo sit natus 18 annos, ut a genitoribus liber sit; et si natus fuerit 18 annos, poterit a genitoribus liber esse. Curators are given to emancipated minors, whose office it is to oversee the administration of their goods and to assist

and counsel them in matters of greater importance.

Completedi viginti et unius anni, sunt maiores suique juris; nisi excipias filios qui pro matrimonio ineundo tantum natos ad quindecim annos declarantur majores. The curator is given for minors who have been emancipated, whose duty it is to oversee the management of their goods and to assist and counsel them in matters of greater importance. Judges or magistrates; whether they be legitimate, that is, prescribed by law (of whom the mother is the first, if she wishes and promises not to transact any other marriages before relinquishing guardianship and giving account: then the grandmother, and nearer consanguineous relatives are suitable) hold themselves bound, together with curators and tutors, to swear that they will faithfully perform their office and give security as a fiduciary, so that the goods of the minor may be kept safe and intact; and all their other possessions are hypothecated in favor of the minor, so that whoever comes upon them, the minor himself may claim them, if he has suffered any loss through them. See Tan. loc. cit. 3.

T. 4. C. 9. Bon. l. c. (1) » 2. The guardian or curator of minors is bound to manage their affairs with care, as a diligent head of household would do with his own possessions, both by preventing and avoiding damages, and by seeking conveniences and profits for the minor; otherwise, the damage and deficiency in profit will be imputed to themselves, and they will also be held responsible in conscience for restitution. See above chapter 2.

The third title, chapter two, decree three, rubric six (2). 3. Good immovables of minors or other precious things which can be kept, cannot be alienated, at least without a judicial decree. » Just as neither (1) in the Civil Code distinguishes triply the guardianship, namely legitimate, testate, and gratuitous. Legitimate guardianship is that which is entrusted to a father or mother or ascendants by law; testamentary guardianship is that which a father or mother disposes of by will even though it can also be conferred through a declaration made before a notary; and it is called familial, when lacking legitimate or testamentary guardianship, someone is entrusted with the care of another by the family council (gall. conseil de famille). The tutor thus elected or designated by will is bound to accept the guardianship, unless excused for just cause.

Article 390. Upon natural marriage or dissolution of civil marriage, the tutelage of non-emancipated minors ipso jure regards itself to the surviving father or mother. Art. 394. The mother is not bound to accept guardianship; nevertheless, she is bound to act as guardian until a named tutor is appointed.

Art. 395. Because the mother-tutor wishes to proceed to secondary nuptials, she shall convene a family council prior to the celebration of the marriage, whose office it is to judge whether the tutelage may remain in her hands; without having convened the council, the mother ipso facto loses the right to tutorship. Art. 405. When the father or mother who survive prior to the death of the tutor have not appointed one, the guardianship ipso jure pertains to the ascendants, provided that among the ascendants of the same degree, those who are related through the father shall be preferred over those who are related through the mother.

Art. 397. The singular right belongs to the father or mother surviving before death in choosing the tutor. Article. 399. That is, however, not the right to custody of the heir that has been deprived of guardianship by entering into a second marriage, given to the mother.

Art. 400. And even if the tutela ablated for her had not been removed, the tutor whom she has chosen is nevertheless necessary and has been approved by the counsel of the family. Art. 405. If there is a lack of all tutela, both legitimate and testamentary, the minor's tutor must be elected by the counsel of the family, according to Art. 406.

That which is convened by the petition of the minor's consanguineous relatives or creditors or others whose interest it is, or by the local prefect of jurisdiction (gall. juge de paix). Art. 420. Every tutor helper (gall. substitute tutor) named by counsel of the family shall have, if necessary, the cause of the minor to oppose the tutor. Refer to the hypothec of minors as set forth in the aforementioned article at no. 689. (2) Article 450. The tutor will take care of the minor’s affairs and act in his stead in all civil actions; he will manage the minor’s goods with the diligence of a careful father of a family, yet without the counsel of the family he will neither be able to buy nor sell or give away the rights of the minor. As for movable goods which can be kept, even if the consent of the tutor is present. point 5. § 4. num. 40.) (4). « 4.

To the tutor, or curator, and to those subject to him, it is not permitted to purchase anything whatsoever from the goods of minors so long as they are such, either by himself or through another, from any goods of minors, unless with the authority of a judge, or by virtue of his decree, publicly exposing all things venal by an oath-bound seller for sale to everyone. Without the decree of the judge, a minor cannot relinquish or renounce an inheritance, legacies, trusts, or any other rights acquired by him/her. » If, however, he has entered religion, he can alienate goods because he is as good as dead. A pupil, while still an infant, that is, a minor up to seven years, or next to infancy (so that, if male, he has not completed the tenth

year with half; if female, the ninth year with half), cannot of himself do anything in any way by which he would obligate himself in any manner, or oblige another for his own sake: but one next to puberty can obligate another to him civilly, but not himself to another, at least civilly. . 38. . c. cap. 47. n. 64. « It is certain that 4. minors, or pupillars even without the consent of the tutor or curator, can obligate themselves concerning goods that are military in nature, or quasi-military; because with regard to these they have free administration.

It is certain 2 that they cannot bind themselves regarding immovable goods without the authority of a judge, according to law. Law which is in chapter twenty-two concerning those things by which to resolve matters of property, and chapter seven concerning quasi-estate minors. Regarding movable goods, they cannot obligate themselves, even civilly, without the consent of the tutor or curator. But it is questioned whether a ward or minor, if he contracts concerning the aforementioned movable goods without authority from the tutor or curator, remains naturally obligated?

It is certain that if a ward or minor contracts with the tutor or curator, they are in no way obligated thereby, according to law. It is not allowed. ff. de contr. empt. et l. Pupillus five formal decisions. By the author of the guardianship.

Likewise, this is commonly taught by the Doctors: if the ward is not proximate to the age of puberty, as they teach in lib. 6, d. 38, n. 24. Lugo, de tutela, cap. 22, n. 286, et n. 42, ut patet ex lege. The pupil 59. ff. de Act. et oblig. If however the ward be proximate to the age of majority and contracts with strangers, it is queried whether he remains naturally obligated? (1) Art. 452.

In the following month after the making of the inventory, with the tutor present along with the assistant of guardianship, he will take care to have sold all movable goods of the minor which the counsel of the family itself did not permit to be preserved. Article 457. Tutor, etiamsi pater aut mater ait, nequit pro minore rem mutuam accipere, nec sine consilii familiae auctoritate minoris bona alienabit nec gravabit hypothecâ. (2) Ex Cod. civ. All minors are declared incapable of contracting obligations for the purpose of entering into contracts; concerning donations and acceptance of donations, refer to the article above regarding paragraphs 721 and 724. (3) Refer to the article regarding note 468.

Edit. The first proposition affirms, and this is held by Lugo, d. 22, n. 288, 2 cap. 47, dub. 8, num. 64, cit. n. 31, 3 c. 9, n. 7, 4 p. 4, § 3, n. 9 et n. 45 cum. Fill. The reason for these four points is that the guardian of an

orphan remains civilly and naturally obligated, according to common opinion, as asserted in n. 45 at the end from the law at the end on Jurisjurandi and l.

Marcellus 25. ff. Sure, here is the literal English translation of the target sentence: Fidejus.

Therefore, if the fidejussoress is already obligated (they argue), a ward obligated should also be understood to be obligated; for, lacking the obligation of the principal, the obligation of the fidejussoress should also lack obligation, as common sense teaches from law. When law 46 concerning Fidejus and l. Naturally, ff. Of the Conditions, indebitament.

But this reason does not sufficiently demonstrate, because it proves too much; for it proves that even civilly a ward is bound. Reason is stronger, because from l. Novation, according to the laws on Novation, it is held that a ward naturally becomes obligated, if he promises without authority from the tutor; since in the aforementioned law it is stated that creditors are to be satisfied, provided that the obligation holds either civilly or naturally, for instance, if the ward promises without authority from the tutor. The second opinion denies that a pupillus or minor remains naturally obligated; and this is held by Bonac. de contr. d. 3. q. 4. p. 5. n. 6. in fin. item tr. 14. c. 4. p. 5. §. 2. n. 44. et vocant probabilem . c. n. 20. et Diana p. 2. tr. 5. r. 44.

Reason, because from the law. That a minor is not naturally obligated; and this Bonac. de contr. d. 3. q. 4. p. 5. n. 6. in fin. item tr. 14. c. 4. p. 5. §. 2. n. 44. et vocant probabilem . c. n. 20. et Diana p. 2. tr. 5. r. 44. On the condition of indigence and according to the law. The ward is expressly denied to be naturally obligated according to the law 59. Thus it is said: A ward, by accepting a loaned sum of money, is in no way naturally obligated.

But this reasoning does not seem firm, for it deals with the case of an infant ward, as explained by the Gloss; hence another Gloss in that same law. Novatio, ait tam'relatam l. A pupillus is to be understood only in reference to an infant pupillus. Hence, the first judgment seems more true to me.

Otherwise, it is most probable that the ward is not bound to fulfill what he has promised, as Lugo holds in d. 22, n. 300, with Soto, Mol. d. c. 1, n. 47, and with . ff. Who is admitted to act is admitted to be acted upon. See the aforementioned note 890. • 7. The same reasoning applies to minors: if

they have a curator, he whom they have once received as such is bound by common law to continue under his care until the age of twenty-five has been completed; and if they have a lawsuit, they are bound to appoint a curator for it excepting only causes of a spiritual nature.

That he may lack a curator, the acts through them are valid, provided that if any injuries have occurred, they be restored in full. See Audi. cit. et Bon. dub. 3. guest. 5. p. ult. (4). Cap. 4. Protection. Dub. 4. - 8.

Although minors cannot donate without the authority of a curator, those donations which such youths are accustomed to make (for in these cases tacit consent of the curator is presumed); yet he who has received gifts from them is not bound to restore them unless they are properly reclaimed; because it is probable that natural assent is given, although not civilly. Mol. Lugo, . p. - 8. t. 6. r. 4. et 7. - 9. Curators and tutors are bound to render an account of the administration each year; wherefore, if any abuse or harm is found, they must be removed, substituting themselves with a satisfactory remedy (1). - 10.

If a tutor or curator, after the rendering of accounts of office, has been justly suspected to have acted faithfully, his guardianship is due; which in some places is the twentieth part of the revenue of all goods lessor, but in others the tenth part. Moreover, those who cannot be tutors and curators; and who are accused of tutelage and curatorship, so that these may not be imposed upon them, for example, having five surviving poor children, etc., see at Tann. loc. cit. and Sa, v. Minor, ubi sic habet: Tutor non potest esse junior vigintis annis, nisi forte mulierem; nec religiosus, nec femina (nisi mater aut avia et tueri osse ante diem), nec alericus in sacris, si non velit, nec episcopus, nisi miseriarum personarum. Of these, however, it is incumbent upon the bishops, the clerics, and the religious to assume guardianship; which I do not concede universally regarding the religious, says he.

See c. (2). - 12. If the tutor and curator are bound to take care and neglect it, have omitted it, let those who are under their guardianship receive from them five for one hundred. Therefore, let it be so. Curator.

See elsewhere - b. See above, I, IV, tract III, chapter II, section 3. Article 442. Without a curator, however, the cause regarding immovable goods does not act, nor will it receive any accepted capital debt.

Art. 443. Item tamen tametsi aliquid alienum aut quidpiam aliud ac quod administratoris est facere maguit, quia formalitates pro minore non

emancipato requisitas servet. Edit. (1) Art. 440. Every trustee, except for the father and mother, is obligated to consider the reasons for management once per year and have them reported at a time determined by the statute from the counsel of the family. Art. 441 (2).

We deny that tutors or those considered members of the family are tutees: 1. Minor children, unless they are heads of family; 2. O Interdicti; 3. O Feminae, nisi matrem vel aliam ascendentes excipias; 4.

O Those whose father and mother have already died otherwise, who more specifically is specified among the good for lesser things. Article 444. Whoever act more publicly in matters of licenses, or whose negligence or unfaithfulness in the management of affairs has resulted in loss. It must be noted besides these to be many others who are such in respect to their age and that of their offspring, as those who flee from pubertate of the same kind or are detained by a sort of adhesion, or who were born twenty-five years or seventy years ago, or who have five legitimate children, etc. Edit.

DOUBT II. What and how manyfold is the testament? §19 What is a testament? Concerning the requisites for a codicil, and what the clause in a codicil would import? §20 Is the testament quadruple? §21 From which heads does a testament become null? §22 What if the solemnities are lacking, and it is a testament for pious causes? §23 What if there is a settled will of the heir concerning the testator? §24 What if there is not a settled will, whether he himself must believe in one witness? And whether a null testament may be valid as regards pious legacies? §25 If a testament has been made by rustic people? §26 If at a time of plague? §27 Whether a testament without solemnities binds in conscience? §28 See other cases. §29 About the testaments of clerics, novices, and soldiers? §30 Dub. 1.

Can a legacy be left to a virgin, so that she may become religious, if it be done? Dub. 2. Can a legacy left to the citizens of a place be taken out and given away? Dub. 3.

Can a legacy left behind be given to orphans who have useless parents? Dub. 4. Whether a legacy left in reversion can be given to girls who already recently have entered into marriage without a dowry? Dub. 5.

Can a legacy left to unmarried girls be given to widows so that they may marry again? Dub. 6. Can a legacy left to maidens who are about to marry be given to a corrupted virgin? Dub. 7.

Is a legacy left to a maiden, so that she may remain a virgin, owed to her if

she marries? Dub. 8. Does a legacy left to a maiden, so that she may marry, pass to her heirs if she dies before marrying? Dub. 9.

Whether a legacy left to a girl, that she may marry, can pass to her heirs if she dies before marriage, in order that it be spent on the church's fabric? Dub. 10. How is a legacy left for the church fabric to be distributed among the poor? §31 Question 31. Whether the last wills can be changed by the Pope without cause?

He asks. II. From the Bishops with just cause? Dub. 1.

Then is it required the consent of the heir and the legatees? Dub. 2. What are the just causes for commuting? §19. — "R ESP. 1. A testament is a just judgment of the will concerning that which one wishes to have done after his death, with direct appointment of the heir.

What is added is this, in order to distinguish it from all other final wills; for it differs from a legacy or partial fiduciary appointment, because this is a kind of gift left by the deceased and to be performed by the heir: (Legacies are to be received by the hand of the heir.) See point 43. § 4. n. 478.) from codicil however it differs, because a codicil is as it were an imperfect testament, and does not serve to institute an heir unless by privilege, for example in the military, but rather for adding, explaining, modifying, subtracting something from the will, or for instituting legacies. See III, T. V, C. IV, and following, D. IV, G. VIII. ». 2. c. 49.

Bonaventurae, distin. 3, quaest. 47, punct. 1 (4). Concerning the codicil or nuncupative, whether in writing or not, five witnesses suffice, even without being summoned, and women (although for a codicil in writing the subscription of witnesses is required according to the last chapter of Codex). For a codicil between minors and soldiers, two witnesses suffice. See Lugod. 23. n. 45. Here it is to be noted that the clause appended to the codicil, namely, that if that should not stand as a testament but as a codicil, imports that if there be no testament, either by reason of defect in solemnity or through the omission of a necessary heir, the heir at law shall dissolve the legacy, according to Auth.

From the reason. c. de lib. praet. et insuper ipse neatur haereditatem restituere haeredi in nullo testamento instituto, retenta sibi quarta Trebelliana, ut colligitur ex l. de Injusto rupto test. et si est haeres necessarius, retenta sibi portione debita. 920. — « Resp. 2. A testament is double (4). I. In written form, or "clausum: quod testamentum testator, sive suâ, sive alterius manu scriptum," septem idoneis et non defectuosis,

non caecis, non surdis, mutis, nec furiosis, prodigis, infantibus, religiosis, cognatis, qui in potestate testatoris sunt; adde infames de jure, fratres patris testatoris, qui sunt in ejus potestate. 40. n. 4. punct. 2. §. 1. n. 40. Add the heir, but not the legatees, nor the tutors, etc., nor the religious, even if they are capable, if tested, without defect. (To which add the heir himself and those who are in his power; but male, mature, free, and to these you ask, and Art. 80.)

Testamentum est instrumentum rececabile, quaerendo quid post mortem de bonis suis in toto aut in parte fieri velit testator. Article 87. Every testamentary disposition can be made either by instituting an heir or by naming a legatee or any other designation apt for expressing consent. Art. 802.

Testamentary dispositions are either universal, by a title universal or particular. All nevertheless follow the rules handed down for each individually, since they are either instituted heirs without, namely legatees. Article 1003. A universal legacy is called Hrud, by which either one or more are given universal goods.

Article. 1004. A universal legacy is said to be revoked by a general title, which entails the alienation of a certain part of goods, for example, half or a third. All certa are particular legacies. (1) Art. 989. The will is divided into diographic, public, and mystical.

Article 970. The diographum must be written entirely in the testator's own hand, with the pen of nullity, when the judgments concerning the manus, the dii whose names are mentioned, and the abscriptions have been pronounced; not subject to formalities: other than these. Art. 971. A public instrument is perfected by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses; Art. 972.

It must be written by the notary, what is said in the testament. Article 976. A testament is that document in which the testator privately disposes of his affairs, which he himself offers to the notary before six witnesses, signed and sealed, asserting that this is his testament either written by himself or by another and subscribed by him. Art. 978.

The public will of a testament shall neither be read by any consanguineous person nor by anyone who is yet related to the testator up to the degree in which he can inherit: this is consented to by law and cannot be done by one who is under age or a ward. Art. 980. Those who are called witnesses to a will must be males, adults, and subjects of the kingdom; yet they

should not be forbidden from being so. When summoned before it is offered, declaring that it is their own will: then, if possible, they should sign it with their own hand; otherwise, eight witnesses in addition to him shall offer it, after which all seven witnesses present at the same time should sign themselves, by their own seal, or by a common seal. Commentary on Question 42, Part 4.

There is no testament written by the heir himself, at least after the sentence. point 2. section 2. note 45. Nuncupativum, quod minorem solemnitatem requirit, scilicet tantum ut septem testes idonei supra dicti convocati audiant et intelligant voluntatem testatoris coram eis scriptam vel voce articulata prolatam (Simul et eodem tempore ut sint contestes). By signs however he denied that the heir was instituted. What if the testator assents?

It is probable that it can be instituted thus, according to Lugo, ibid., n. 42, especially for pious causes. §3, n. 47, at the end with . If however the testament lacks the due solemnity, and there is doubt whether the testator intended to close or leave it open, it will be valid as nuncupative: for this is presumed to be the testator's will, so that the act may not entirely collapse. 4. cons. Lugo, tomus 2, de iustitia et dementia, dissertatione 21. » Bard. d. 6. q. 40. §. 4: » Besides these solemnities required by common law, there are also local formalities, which each place's expert notaries know individually; hence they prudently apply them to avoid any inconvenience.

» But besides these solemnities required by common law, there are also partial places, which in each place the expert notaries know: and therefore they are suitably employed that no harm may be incurred. It is to be noted 4. when Lugo on the 24th day, note 5, who cites c. 4, q. 3, r. 2, against some, from the more common, according to l. This most learned consultation, concerning the witness to a will, etc., and l. Heirs 24. ff. in the same title are not sufficient for the value of a nuncupative will which the testator declares he names heirs in such a schedule, for example one sealed with a seal or closed in such a place, and other dispositions; but it is required that he himself name heirs before sufficient witnesses; and as regards the rest, it suffices that he refer to the schedule. 921 — Notandum 2. that from threefold heads a will can be null: I. on account of the defect of substantial solemnities, which are explained by the author.

II. Ob defectum formalium sacramentorum, quae ex traditione explicantur. On account of a defect in completion, for if the testator dies or loses his ability before completing the testament, even though he may have instituted an heir, the testament is null and void. If anyone, from the laws

concerning Wills. This nevertheless runs thus: if it be established that the testator willed to institute other heirs or legatees; in dubio however the testament is valid; just as it is valid if this property be pious causa, or if there be pious legacies written therein. II c. 5. punct. 3. num. 27. Since a testament may be null on account of defect of freedom, because the testator did not freely will it, or was not of sound mind, or was deceived, or coerced by force, or by importunate entreaties, or out of reverential fear. n. 30.

Likewise, if the testator was induced by simple entreaties, persuasion, etc., see . c. 922. — "Do you inquire whether a testament is valid which lacks the solemnities required by civil law?" Resp. 1. If a testament has been made for pious causes, even in external forum those requisites are not required but suffice which are of natural law, namely two witnesses; in the internal forum, however, supposing the power disposing, suffices the writing, nod, or some other sign of the testator without any witness. That said, if nevertheless the hand of the testator does not exist, two witnesses are required in external forum, between whom a woman may also be present.

Covar. et alii 12. t. 6. r. 16. » (With Sal- mant. ibid., punct. 2, § 3, n. 17.) Item, a confessor or parish priest may be present even though the legacies are intended for his own church; this is only done so that the will of the testator may be proven and the judge may render judgment thereon. See 22. s. 9., where it also proves that in such a testament, the institution of a trustee for pious causes is not necessary. Even though it was not absolutely completed by death, it nevertheless holds good as regards the pious legacies expressed therein.

Malder. t. 16. r. 126. Now however such a testament, if primarily made for pious causes and lacks solemnities, is valid as regards profane legacies: Bonaventure and Lugo deny this, while Covarruvias affirms it. Therefore, in the fourth decree of the sixth treatise, chapter four.

» (et hanc tenent 14. c. 5. p. 2. §. 3. n. 19. et 2. num. 5. cum communiori et Roncaglia c. 2. q. 6. r. 4. vocat communem, quia accessorium sequitur naturam principalis. The opinion of Bonacina, punct. 3, n. 18, and that of Lugon, d. 22, n. 274, is sufficiently probable: because with regard to laics, the Pope makes no disposition. The rule that an accessory follows the nature of its principal does not always hold, because itself it does not proceed where there is a different reason for the accessory as compared to the principal; and hence, even though the will primarily be profane, the legacy therein should still be observed, even if the civil law's solemnities are lacking. Furthermore, the testament in favor of the children, although

valid as regards the children, nevertheless is not valid as regards others, if the solemnities of common law are lacking, as is stated in the law.

This most learned and according to the law. From imperfect to perfect. c. de t. 6. r. 25. et 26. » (when . 4.) that very thing, » even though it may have previously been directed towards pious causes. Mol. et alii 6. licet hoc posterius quidam negent.

See loc. cit. cap. 26. 27. (1). 664 lib. 4. Treatise 5. Of the seventh precept of the decalogue. 913. — As regards pious dispositions, it is certain that if the testamentary will of the testator is known, whether by words, or by gesture, or by writing, the heir must be in conscience either to renounce the inheritance in favor of a pious person, or to discharge the legacy. Thus commonly Lugo says, d. 22, n. 267.

Concina t. 7. pag. 647. n. 9. de Testam. num. 5. tit. 2. q. 2: r. 1. et n. 18. cum etc. Unde infertur, quod si testator dedisset tibi aliquid ut tanquam pauper retineres, vel ut in pias causas distribueres, tute id faceres, etiam inscio, et invito haerede, prout docent Lugo n. 268. d. 134. et c. cum Dic. Gom. etc. 924. — Caeterum, si contra non constet haeredi voluntas testatoris, docet n. 4. quod ex certa regula, omnium consensu recepta, non tenetur haeres in suo praejudicio credere uni testi, quamvis probetissimo, dum in c. Relatum, de Test. expressè dicitur: Tribus, aut duobus testibus requisitis; et in c. Licet, de Testib. dicitur: Licet qua- dam sint causae, quae plures exigunt testes; nulla tamen est causa, quae unius testimonio, quamvis legitimo, terminetur. This was necessary for the common good, that frauds might be avoided, as they say in c. 4, n. 657, and Croix l. 2, p. 3, n. 1130. Hence it is taught that the heir is not bound to believe solely the parish priest unless another be present to testify; and the same is said in 40. art. 2. n. 3. et Croix ut sup.. 925. — • Resp. 2. If a testament is made for impious causes, rustic people require five witnesses; if more can be had, no subscription will be necessary if there are no literati.

Lagm. l. o. c. 2. n. 16. Good. Chapter on the subject, part 4, number 5. Here it is asked whether a will which is invalid as regards unrighteous causes remains valid as regards pious legacies? Others deny it, because with the principal corrupted, the accessory is corrupted.

But the more common opinion affirms this, because a special reason is found in the accessory which is not in the principal; namely, favor religionis, and therefore there is considered only canonical law there. Thus in III. tractatus III. caput 2. and VI. responsio 2. with Cov. 926. — • Respondens 3. In time of pestilence, seven witnesses are not required to be simultaneously gathered for subscription: but it suffices if each one is

separately applied to. Add that equity is demanded, so that when witnesses or a notary cannot be had; the last wills validly pronounced may be announced, provided it is clearly established from the intention of the deceased.

Hence in the imperial chamber a testament is valid, when there is a great pestilence raging, if it be deposited before two or three witnesses among whom the confessor may be reckoned. And this is true according to common law for the Emperor, subject only to special local statutes. For in Venice and Vienna two witnesses suffice for a will. See chapter two. But absolutely speaking = in terms of time during a pestilence, sufficient are the solemnities of the law of nations, and - accordingly three, or two witnesses. t. 6. r. 34. ex Sa, provided that the relative of the deceased is not consanguineous nor affinal, r. 36. according to 37. and 38., they shall not be invalidated, even if the sick one recovers, r. 39. from others 8.

Finally, if the parish priest writes in the presence of a single witness, they say that it has the force of a will, at least nuncupative, Molinists and others say, references 34 and 41. See also p. 5. t. 3. r. 123. (1). 927. — » Resp. 4. Although it is a probable and secure opinion, 3 q. 1 p. 4 et aliorum, that a testament made for non-pious causes, without solemnities required by law, is invalid in the forum of conscience except as regards pious legacies, Diana p. 7 t. 6 r. 3 contra Barbos, such that the heir is bound to restore to the intestate's heirs according to that testament; yet the contrary is more true, and hence it is rightly retained, because by such a testament they are possessed. The reason is that such solemnities are required solely to guard against deceit and to establish faith in external dealings.

See 2. c. 49. d. 3. C. Lugo disp. 22. s. 9. Threefold indeed is the opinion (as we said regarding contracts n. 714.) concerning wills established without solemnities. The first sentiment holds that it is valid in conscience, and naturally conforms an obligation.

Thus according to Bus. . 2. c. 49. dub. 3. Mol. d. 84. Sa, and Sylv. v. Witness.

Roncag. from question 4, response 2. likewise Mald. T. J. l. 6. cap. 3. n. 4. And they prove from §. By tradition of the Institutes on Divine Affairs: Nothing is more consonant with natural equity than the will of the Lord who wishes to transfer his thing to another, and this has been ratified. Hence Molf. ibidem distinguishes the heir by intestate succession, if it is certain from the will of the testator, to hold that the inheritance be executed and the estate restored.

They decidedly uphold the opposite opinion regarding the second sentiment. Cab. l. c. et 14. c. 4. n. 54. cum Eamdem sententiam sequitur Lugo d. 22. n. 256. cum aliis, sed excipit fideicommissa, ex §. ult. Inst. de Fideicommissis. The third opinion, which is embraced by Cabassius loc. cit., together with Soto.

I consider the first and second opinions probable, but this third opinion more probable, and absolutely to be followed in practice; because rather than all law, the law of possession holds; (1) Art. 885. In the place where there can be no communion on account of a pestilence, wills may be made by the prefect of the jurisdiction and the municipal magistracy of the city before two witnesses. Article 987. That privilege lasts for six months from the restoration of communion or from the passage of the testator to another place.

Book 4. Treatise 5. Concerning the seventh precept of the decalogue. I think it must be said unconditionally that a heretic is not bound to dissolve [it]; on the contrary, legatees, if they have accepted a legacy bona fide, are not bound to restore it. Observe attentively what we have said in note number 714.

That nevertheless is to be understood unless the judgment of the judge be brought in, as they say, c. et Cabass. l. c., and with them others are cited. It does not hinder to say that the judgment of the judge does not oblige if one strives to obey a law based on a false presumption of fraud which is not present; for, besides the fact that the judgment then strives to be obeyed which is founded in danger of general fraud, as Roncaglia responds, everyone is bound to comply with the command of the judge ordering it, provided his sentence is not evidently unjust, for the sake of the common peace and to put an end to disputes and quarrels. Whereupon this matter is resolved: • 4. The heir by intestate succession, if he knows the will of the deceased, is bound to restore the inheritance and to fulfill legacies owed to those whom less solemn testamentary dispositions, or according to his own will, are due. Molin. • næ. l. cit.) » (Secus tamen verò dicendum juxta contrariam sententiam probabilem mox separà allatam.) • 928. — • 2.

If the will of the testator is doubtful, it should be composed with them according to the reason of doubt: because, since neither he himself nor others have yet begun to possess the goods in good faith, in doubt it is fitting for their condition. See Bon. l. c. 3. If the heir by intestate succession retains the inheritance and legacies, those to whom something was bequeathed through such a testament may use secret compensation,

because truly that thing belonged to them. See Bon. l. c. » (But we deny this.

See the aforementioned [work] chapter 4, note 35. However, (in note.) • 4. If the heir, acknowledging intestacy, admits that the mind of the testator was to transfer the estate by means of a trust for another person, or to discharge some legacy; or if, having been offered an oath and refusing to swear, he is compelled, even in external forum, to transfer the estate and discharge the legacy. For the same reason, it must also be said if he admits that the testamentary will was such that the inheritance would immediately pass to another person, rather than as a trust, because one should not resort to the testimony or subtleties of law when he himself confesses the testator's will.

See de Lugo l.c., Ait Lugo d. 22. n. 257. et 238. quod si testator voce committat hæredi fideicommissum, et hæres tacet, tenetur utique illud implere; secus, si testator committat ei legatum; dicit tamen, quod si hæres solverit jam legatum, non potest repetere. 929. — Resp. 5. It is probable that the wills of clerics and novices made for causes not pious without solemnities of law not to be violated: Mot. et atti 3. Yet even this is probable, and the heir may inherit the estate from such a testament according to the forum of conscience. f. 9. r. 46. Chapter 4.

Lettestamenta sint. Desideratum 2. - Respondentium 6. The soldiers of this time rejoice in the same privileges of testation by which formerly they were permitted, provided that they are stationed in the camp (or in its vicinity for a legitimate cause). tr. 45. rest. 24. et seq. ex aliis 13. contra 45.), even if not requested, r. 46. and others 4. contra Molin. Lugo, etc., and also elsewhere indonesi, provided that they are not minors, nor blind, nor slaves, r. 47.

Lugo, Imo milites jure militari (quo praesumitur esse testatus in dubio) potest testari solo nutu, r. 49. He can also make several wills valid at the same time, whether testifying for a part or intestate as to a part, r. 53 and 55. His testament is valid even after an honorable dismissal, but not beyond one year. 64. Finally, soldiers can testify in the aforementioned manner, even if they are deaf and mute (at least if they have heard it in camp and lost their voice). 48. 49. et 50. ex aliis. (A testament between minors is valid, as a disposition made for a pious cause.)

See . 14. e. 5. punct. 2. §. 4. n. 20.) (f). 930. — Here it is necessary to note several doubts concerning the matter of legates. Dub. 4. Whether a legacy left to girls, so that they may marry, can be given to those who become religious? Resp. An testamentum reliquum puellis ut nubant possit dare

eos quos fiunt religiosae?

If a legacy has been bequeathed to a determined person, it is certain that it can be given to them, unless otherwise it be the intention of the testator, according to Auth. de Vide, punct. 43, § 2, n. 184. What if a legacy bequeathed were left to indeterminate persons? The first opinion denies that it is necessary for those entering religion to be deprived of their dowry; this is held by them. L. 4, d. 33, n. 32. Bonac. d. 3. q. ult. punct. ult. n. 19.

Mol. d. 207. 83. n. 27. q. 2. r. 3. p. 679. n. 40. et Lugo dist. 24. n. 293. cum communi, ut asserit. Reason, because the mind must be served in a specific form always and can be so served; recourse should not be had to its presumed will when there is an expressed contrary will: such testaments intend solely to provide for pious maidens who wish to marry, so as to shield them from the danger of seduction. Nec obstat (4) Art. 98. Testaments nil tum eorumque omnem qui in exercitu versantur, ubique ab agmine aut turma duce (gail. chef de bataillon ou d'escadron) aliove militum praefecto ordinis superioris coram duobus testibus fieri possunt; item à uno commissario militarium (gail. commissarius des guerres) vel uno commissario coram tribus testibus; Art. 98.

Item à praeefecto valetudinis (gail. officio sancti ae. chef) et cum praefecto militari, qui xenodochii curator (gail. chargé de la police de l'hospice) est, cum milites segroti aut vulnerati decumbant. Article 98. This privilege is not sought by those who, being stationed within the limits of the kingdom in a garrison or winter quarters, are neither in captivity nor under legal constraint, and whose communion with others cannot be hindered by wars. Article 98.

The executor is bound for six months from the restoration of liberty to adhere to the usual formulas. The aforementioned is adjudged to cause prejudice to other intended heirs besides those named by the testator in the case stated. The second opinion, however, which they hold, is that of number 485. Diana page 4. treatise 14.

Miscellanea 35, cum Pontio, Natta, Boerio, et Ochagavi; adhaeret 2 c. 48, dubium 45, n. 423, affirmat debere legatum; quia in dicta auctoritate assignatur ratio cur legatum relictum certae personae ad nubendum ei debeatur si fiat religiosa: Quod vitam proficiscatur religiosam; scilicet ne puella relinquat statum religiosum ut legatum consequatur. When however the same reason for the law urges regarding indeterminate girls left with the legacy, therefore they are not to be deprived religiously: For in this (as it is said in the l.) The laws concerning the matter at hand are found in the

codes regarding inheritance. Aquil. (The same reasoning applies, and the disposition of law should likewise apply the same reasoning.)

Neither (says Lessius) does the aforementioned law of Justinian rely on the presumed intention of the testator, but absolutely it intends to favor the heir even against the express will of the testator; so that if the testator shall have expressed that girls entering religion are to be excluded, such a disposition is rejected as dishonorable. I dare not reproach this judgment; yet it seems to me undoubtedly more probable: because the Authentic disposition contains a new law, which, since it exceeds common law, should not be extended case by case; especially because such extension would prejudice others. Concilium autem probabiliter dicit tom. 7. p. 680. n. 41, quod si non extarent puellæ, quæ nubere vellent, tradendum esset legatum religionem ingredientibus; nisi ex mente testatoris expressè oppositum colligeretur. Furthermore, it adds 83. n. 28 among others, that if the testator leaves a thousand to a girl if she marries, and a hundred if she enters a monastery, then all the thousand should be given to the monastery if this is done in hatred of religion; because then such a decision must be made as a penalty against the testator: otherwise, if this were done, the dotes of religious women would be less than those of married women.

Dub. 2. May a legacy left to the citizens of the place be given to strangers? Unless they do not intend to remain there permanently, then from the beginning they are regarded as natural; or unless without such an intention they have remained there for a decade. Thus in the fourth chapter, point forty-three, section three, note four hundred eighty-six, with Lugo, part seven, page six hundred eighty-one, note fourteen, from book one, chapter on Inhabitants.

Here added is what Sanchez, Trullanich, and Barbosa transmit according to P. Ferrari (Bibl. v. The city no. 74.) namely that a legacy should not be left to native daughters who have been casually born there. Dub. 3. Can a legacy be given to poor persons having parents who are legally incapable?

When the parents are truly bereft and unfit, it seems to be accepted by all that something can be given. Reason, because thereby the will of the testator is also fulfilled who wishes to provide for children not having parents from whom they might receive support, and such are those who have useless parents; according to that famous statement in the Gloss on c. Admanere, caus. 33, Question 2, verse. I said. If you are bereft of goods, neither have a name among harlots.

And from the Glossa v. Useless in c. Inter corporalia, to this adheres what

they say: Covarr. Balduinus, locum citatum nempe quod pater dicitur orbatus filio, si filius est inutilis, ex Glossa in loco. Plagiariis, c. ad L.

Flavium de ita Roncaglia de quaestio quinta respondens primam. Concerning the tome 7, page 684, number 15, treatise 2, response 52, note 187, with 24, note 303. But when true orphans are present, should these be preferred? All the aforementioned authors affirm with Sanchez, Cons. l. 4. c. 2. dub. 43., who calls it a common reason; because, when the will of the testator can be fulfilled in its proper sense, it should not be fulfilled in an improper sense, according to Clement.

Because it concerns domestic relations and is found in chapter 8 of De Beneficiis. For just as a wife is not properly called a widow, who has an ineffective husband but lacks a husband, as they say. Table and Augustine among. Nevertheless, it seems that Bonac. d. 3. q. ult. n. 9. and Roncag. l. c. r. 2. do not entirely disapprove.

Reason, because although it does not conform to the letter of the disposition, yet it nevertheless, indeed more closely accords with the purpose of the testator in providing for the poverty of his children, who, since they have useless parents, are truly orphaned and more destitute, in that then they should provide not only for their own poverty but also for the indigence of their parents. Dub. 4. An inheritance left to girls that they may marry can be given to those who have recently come of age without dowry; for then the purpose of the testator is fulfilled, namely, alleviating their own indigence. It is commonly found in the Decretals, lib. 4, dist. 94, cap. 63.

Rome. concerning question 3, response 4. Saltant. tr. 14. c. 5. punct. 43. §. 3. n. 188. cum tom. 7. pag. 680. num. 42. Dub. 5. Whether a legacy left for the purpose of arranging marriages for women can be given to a widow who is again eligible for marriage?

Resp. affirmatively, nisi sint aliae feminæ: nubiles aetate: aliter, si sint, quia nomine uxoris in matrimonium collocandam proprie intelligitur eam, qua numquam nupsit, vel si nupsit invalidè, aut matrimonium suum non consummavit, ex lege. Cows, §. With this speech. ff. concerning the meaning of words. Thus commonly in Saint Thomas, in the seventh book on Marriage, decree number ninety-five, note sixty-five. Rone. d. c. 7. q. 3. r. 4.

Conciliarium tomum septimum paginam sexcentos quadraginta quattuor numerum quadraginta et cum Bonaventura numerum quadringentesimum

novemdecimum novem. Dubium 6. Whether a legacy left for brides can be given to a virgin even if she is corrupted? It must be distinguished: if publicly it is known that she is corrupted, it cannot be given to the virgin even if she is corrupt: because the will of the testator would not be fulfilled, who wished merely to assist those who are truly virgins.

Accordingly, if it is secretly known to be corrupted, because in common estimation this is regarded as a virgin, as is gathered from the law. Book, §. What now follows are excerpts from the laws concerning legacies. Nor is it deemed that the testator wished for the girl to manifest her turpitude: thus commonly Concil. tom. 7. p. 684. n. 46. Roncag. on Testaments, d. c. p. 4, r. 1, n. 490, cum ibidem, quia in favorebilibus verba sunt largè interpretanda, ut probant in tr. de leg. c. 4, n. 49, et seqq.

But more probingly do the Council at loc. cit. and Martin à S. cite n. 490 deny this, firstly because the words of the testator must be observed with strictness as far as possible; secondly because such an interpretation would prejudice others. And the same seems to be held by them; yet Concina and agree on this point. Dub. 7. Is a legacy left to a maiden, so that she remain a virgin, owed to her if she marries?

Affirm; for so it is established in the law. How often, according to the 22nd formal decision concerning conditions and demonstrations? Because, as is found in another law, 2. c. de ut proles augeantur. Accordingly, it should be said that if the laws are left to the widow, for the sake of her widowhood, Auth.

The legacy left to a widow because it is fitting to abstain from secondary marriages; thus, c. 1, punct. 8, n. 409 and 440, and Concin., pag. 688, n. 7. Dubium 8. If a legacy left to a maiden, that she may marry, passes to her heir if she dies before marriage? Lugo correctly distinguishes in his work on the twenty-ninth number of the twenty-fourth day with Sanchez and Molina.

If a legacy left to a maiden is with an intention regarding the possibility of her marrying, so that she may marry, then it passes to her heir; otherwise, without any regard for the person, but merely for the pious work intended to be performed; because then it must be converted to providing dowry for another poor woman; or if the legacy be left with a necessary condition that the maiden marry, without an intention of performing a pious work, because then the legacy will be profane and become void, and consequently it will pass to the heir of the testator. Testamentum pendens a eventu incerto et ita comparatum ut ex inten- tione testantis ad effectum perducendum sit, prout eventus obtinuit necne, non stat, si hæres aut

legatarius ante expletam conditionem moriatur. Article 1041. Will made subject to a pure condition suspending its execution, does not stand if the heir or legatee dies before the condition is fulfilled.

Of wills. Dub. 2. Dub. 9. Whether a legacy left for the construction of the church can be expended on ornaments and other things necessary for divine worship?

Panormitanus and Lopez deny this in book 4, chapter 2, dubium 14. But they affirm probatively the same thing in n. 304, chapter 24, because by the name of "fabrica" they understand all things necessary for the service of the Church, unless otherwise it be determined concerning the intention of the testator. Dub. 40. How is a legacy to be distributed which has been left for the poor?

Resp. Si legati executionem relicta sit ad electionem haeredis, potest ipse dare cuicumque vere pauperi. If however the choice of heir has not been committed, then preference is to be given to L. Executors of the testator, so that commonly DD. with Barbosa on power. Ep. alii 83. n. 17. et c. 7. q. 6. r. 2.

And among them the proximate ones are to be preferred, as D. Thomas teaches in II-II, q. 32, art. 9. For this is what the order of charity demands; and this he adds. II. The poor are to be preferred over other strangers, as the Glossa states in c. Pauperes, according to which it is gathered from the law.

III. More indigent ones should be preferred over other outsiders, as S. Thom. l.c. art. 3 ad 4 c. et even nobles, as IV adds. Poor men of more proven life. St. Thomas ibid., article 9.

Hence they say. 3rd part, 5th question, chapter 41, note 6: Truly, however, he considers rightly that in an equal poverty women should be preferred, since these are more exposed to the greater danger of sinning, the same Roncag. When however the testator shall have said, a legacy to be distributed among the poor, it cannot be given to one person; thus l.c. n. 7. 2.l.c. n. 54. et c.n. 22. et 54. cum et aliis communiter. They nevertheless accept this exception, because it is not presumed that the testator wished to place someone in a lower condition than other poor individuals; and if something were left to him, it would be more fitting to consider that it happened through forgetfulness, inadvertence, or that the testator did not wish to cause the executor embarrassment by including him among the poor. 934. — Here the inquiry begins I. Whether a Supreme Pontiff can

validly commute the last wills of testators without just cause?

There is no doubt that the Pope can validly commute the last wills of testators for just cause, as is evident from Clement. Because it happens, concerning the religious matters of Domiö, where it is said: That which impedes the heir instituted and legatee for a certain use, so that they may not transfer their right to their own heirs. Editiones sunt destinatae fidelium, ad illud debeant, non ad aliquid (saludiv Sedis Apostolicae auctoritate) concerti. But there is doubt whether it can be permissible for the Pope to act without cause?

There are three opinions among the doctors. Council. L. 4. C. 2. Dub. 1. N. 1. The first opinion affirms what Arm. V hold. Nomen legati numero quinquagesimum quintum.

Eng. eadem verba loci Ratio, quia omnia legationes intelliguntur implicite relata ad arbitrium Pape vel principis. The second opinion, which the Angles hold, and Rossellus numbers 2, and to which Croix adheres in book 4, number 842, admits this of absolute power, not however of ordinary power. The third opinion is more probable and common, which Bus. isfr. holds with Bart. Socia. . 3. str. 5. c. 44. a. 11. . 14. c. 5. punat. 13. §. 3. n. 494. cum communis, Mol. l. 4. de n. 40. et Lug. d. 24. num. 312. (qui praefatas dum sententias falsas vocat), omnino negat posse Pontificem aut principem sine justa causa testatorum voluntates commutare.

It is proved by chapter 6 of De Ref., where (as . c. with Mol. d. 249.) it is supposed that such commutations cannot be made by: The Apostolic See, except for a just and necessary cause. It is proven by reason, because although the dispositions of testators may be committed to the Pope (or prince), yet not as to a lord, but as to a dispenser of good causes for the common benefit, whence, since the Pontiff is not the lord of such goods, he cannot either by ordinary or extraordinary power convert these dispositions to another use than that which they have been appointed by the testators. If therefore a legacy is profane, the prince may, for necessity of public nature or some other just cause, change it into another profane or pious legacy. If however the legacy is pious, then only the Pope may intervene with just cause to convert it into another pious legacy.

It is questioned H. Bishops with just cause can commute pious dispositions. The first opinion affirms and holds thus the Angel: v. Legacy 2. n. 12. and 44.

Sylvest. in the same volume, question 42, chapter 56; and Cons. in the

fourth book, chapter 2, decree 2, number 3; and Beja with others according to Oricio, decision 4, number 868, who adhere to this sentiment. Reason 4. Concerning the common opinion (as Oricio asserts in the same place), it holds that among Bishops there is this ordinary faculty of ordaining; because such a community is prescribed by dispensation to fulfill the ultimate implications of final wills; hence, when it is said that dispensations can be made, and it is not expressed from whom in the Decree, it is sufficiently understood that Bishops can do so; as the Patriarchs teach in Saner. de leg. 1. 6. a. 41. n. 1. et l. 8. d. 5. Hence they infer from c. d. 7. et Lugo d. 24. n. 340. that if a testator left to the Church a legacy for the feast anniversary, the Bishop can temporally commute that into a repair of the Church which otherwise could not be repaired. Ratio 2. quia, licet Episcopus nequiret hoc facere ex potestate ordinaria, po- test tamen ut Sedis apostolicae delegatus, modo adsit justa causa judicio Episcopi: idque probant ex ubi dicitur: In commutationibus ultimarum voluntatum, quae nonnisi ex justa, et necessaria causa fieri debent, Episcopi, tanquam delegati Sedis apostolicae, summarie et extrajudicialiter cognoscant, nisi in preci- bus, tacitd veritate, vel suggestd falsitate, fuisse narratum, prius quam commutationes praedictae executioni demandentur.

Thus Barbosa on power. The Bishop alleges Article 83, note 5, with Mendosa, cited and also at Rome, et cetera, chapter 5, page 43, section 3, note 193. The second opinion, however, is more probable than that which 249. 3. tr. 5. c. 41. n. 40. and c. dub. 2. with Altis negates, namely that bishops cannot even be commuted by just cause for the ultimate wills. Reason, because from chapter Tua of book 8 it is imposed upon bishops to exact and fulfill exactly the last wills; and this, even if the change were made for the better, as they say in chapter n. with Imola, and Bonifacius, and adheres Lugdunensis d. 24, n. 307 from chapter Conquestus de Foro comp. and chapter Quia nos de rectificatione 26, and Sylvester.

Beja, 4. n. 847. who admit the commutation in a better manner. Neither is it proven that the first sentence is to be attributed to Nam; for there the bishops are entrusted with the execution merely of the last wills, so that when such changes of the last wills are committed to them by the Apostolic See, they themselves, before demanding their execution, examine whether they are true causes? The Council had spoken immediately in the preceding chapter about the executions of dispenses obtained solely from the Apostolic See. And they say that this is consonant with the Clementine, because it happens, as cited in I.

Quast. However, they very much consider and agree with Bon., and . When however pious legacies in no way can be applied to the use intended by the testator, those are not void, but must be applied to some other

pious use at the discretion of the Bishop and executor, as teach idem cum Abbate et Lugo d. 24. n. 305. ex c. Nos quidem, de Testam. But there is doubt 4.

In commutations to be made by the bishops, is also required the consent of the heir and the legatees? Abbot, and concerning the power. Ep. all. 83. n. 6. dicit requirere consen- sum haeredis ex c. Nos quidem de Testam. But if the heir does not wish to consent, only the Bishop can effect the commutation, as it is said in the same place. Peter de Ubaldus says in the same work according to Bartholomew that besides this, the consent of the Church is also required which was entrusted with a legacy; but if neither the Church nor the Church wishes to consent, only the Bishop can effect the commutation.

Doubt is cast. What are the causes on account of which the Bishop may lawfully change the last wills? The cause is when the money bequeathed for a certain use is insufficient. 83. n. 7. etc. II. When the use of the legacy cannot be fulfilled, this is similar to Riccio; or if the thing bequeathed cannot perform service for the purpose intended, either on account of an impediment in the contract, or in the law? Thus it is with Imota, Bonifacius c. 5. de Riccius cum eodem.

Whoever notes this with Ubald says: And if however the impediment is one of law, Peter distinguishes the same from Ubald; for if the legacy is intended for pious uses, then there is a commutation; but if it is intended for dishonest uses, for example, if theatrical games are held in the Church, which are prohibited in the chapter on maintaining decorum, life, and honor of the clergy, then the legacy becomes null as useless, and it is rendered void. III. The cause is, if a legatum has been made for an use not so necessary; then the Bishop can change it to another use more suitably necessary for that Church; thus as with Riccio and Genuen. See what is said in Qu.

II. But also for another profitable use, if the cause be most serious, and thus the intention of the testator be presumed, let it be added there. Genesis cap. In like manner does the same person say with Riccio that the revenue assigned to some chapel for masses, the Bishop can change once only into the purchase of vestments.

WINE VOLUME TWO. INDEX OF HEADINGS AND QUESTIONS, TO WHICH ARE ADDED ALL THE SUMMARIES That are appended to each heading and question, so that all things and inquiries contained in the second volume may be had before the eyes at once. The letter 1 denotes a book, n a marginal number, v a verse. BOOK FOUR.

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It is to be noted.) ## DUB. VI. OF THE IRRITATION OF VOWS. ARTICLE FIRST. An, and how is the obligation of a vow removed through direct irritation? Page 85. Who can irritate vows? Is it permissible to irritate vows without cause? Which vows of children can a father, grandfather, tutor, etc., irritate? What can irritate a mother? If subordinates' vows are annulled by their lords in error—father, husband, etc.—what then? Who can irritate the vows of religious and nuns?

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358 For what purpose are parochi bound concerning residence. (See also book 5, number 419.) 359 For what purpose are they bound concerning the administration of sacraments, especially during the time of pestilence. (See book 3, n. 27.)

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Et an fur teneatur ad omnia damna, saltem confusè prævisa. Cui crescat pretium rei ablatae. Quid, si apud furem pereat res, quæ æquè periisset apud dominum? Quid, si quis occidat agnum alterius, qui postea pluris valuisset? And what if the thief consume a sheep of greater value in time when the master would have consumed it in time of lesser value? What if someone pretend himself to be poor? What if someone consume another's property out of extreme necessity? What if he consume a thing that has been borrowed? What if someone buy another's property with doubt?

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II. Is it permissible to retain or accept something belonging to another person with presumed consent from the lord? (See also book 5, n. 48.)

Question NoneAn debtor giving immemorially [or: forgetting] debt will be executed to restitution. 701 What if the debtor, by restoring, should cast himself into extreme necessity? 702 What if he should fall into grave necessity? 703 What if the creditor is in like necessity? 704 If a debtor delays restoration for just cause, is he bound to render interest which the creditor suffers? 705 An heir of a thing [is] bound to damages when the one who succeeded him was condemned capitally. 706 A possessor in good faith, in doubt, whether he has become richer by fact, is bound to restore. TREATISE V. HEAD III.

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